TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 662

DAMPSKIBSSELSKABET DANNEBROG, CLAIMANT OF THE MOTORSHIP "STJERNEBORG", ET AL., PETITIONERS,

vs.

SIGNAL OIL AND GAS COMPANY OF CALIFORNIA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 22, 1940.

CERTIORARI GRANTED FEBRUARY 26, 1940.

No. 9182

United States

Circuit Court of Appeals

For the Ninth Circuit.

DAMPSKIBSSELSKABET DANNEBROG, a corporation, as Claimant of the Motorship "STJERNEBORG",

Appellant,

vs.

SIGNAL OIL AND GAS COMPANY OF CALIFORNIA, a corporation,

Appellee.

AKTIESELSKABET BORGESTAD, a corporation, as Claimant of the Motorship "BRAND",

Appellant,

vs.

SIGNAL OIL AND GAS COMPANY OF CALIFORNIA, a corporation,

Appellee.

Apostles on Appeals

Upon Appeals from the District Court of the United States for the Western District of Washington, Southern Division

PARKER PRINTING COMPANY, 545 SANSOME STREET, SAN FRANCISCO

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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PROCTORS OF RECORD:

For Libelants and Appellees:

Messrs. FAIRBROOK AND WILLIAMS,
Central Building,
Seattle, Washington.

For Claimants and Appellants:

Messrs. HAYDEN, MERRITT, SUMMERS & BUCEY,
Central Building,
Seattle, Washington.

In the United States Circuit Court of Appeals
for the Ninth Circuit

SIGNAL OIL AND GAS COMPANY OF CALIFORNIA, a corporation,

Libelant-Appellee,

vs.

Motorship "STJERNEBORG",

Respondent,

DAMPSKIBSSELSKABET DANNEBROG, a corporation,

Claimant-Appellant.

SIGNAL OIL AND GAS COMPANY OF CALIFORNIA, a corporation,

Libelant-Appellee,

vs.

Motorship "BRAND",

Respondent,

AKTIESELSKABET BORGESTAD, a corporation,

Claimant.

STATEMENT

This admiralty appeal involves two cases, consolidated by stipulation in the lower court for trial, and consolidated in this court after the entry of decrees for the purpose of appeal. The two cases involve the assertion of a maritime lien for the value of fuel oil.

In both cases the libelant-appellee was Signal Oil and Gas Company of California, a corporation. In one case the [1*] respondent was the motorship "Stjerneborg", and Dampskibsselskabet Dannebrog, a corporation, was claimant-appellant. In the other case the respondent was the motorship "Brand", and Aktieselskabet Borgestad, a corporation, was claimant-appellant.

In the United States District Court for the Western District of Washington, Southern Division, the libel in rem against the motorship "Stjerneborg" was filed May 11, 1935, and the libel in rem against the motorship "Brand" was filed June 5, 1935.

After the service of process in each case the vessel was released on bond, the motorship "Stjerneborg" on May 16, 1935, and the motorship "Brand" on June 7, 1935.

By order of the District Court, under Rule 48, both cases were dismissed for want of prosecution on July 7, 1936, and reinstated by vacation of the order of dismissal on July 9, 1936.

Claimant's answer to the libel in each case was filed on May 14, 1937.

On May 9, 1938, the cases were tried and submitted to the court upon a consolidated stipulation of facts. The cases were tried before the Honorable E. E. Cushman, District Judge at Tacoma.

The court's memorandum decision in the consolidated cases was filed December 7, 1938.

*Page numbering appearing at the foot of page of original certified Transcript of Record.

Separate findings of fact, conclusions of law, and decree were signed, filed and entered in each case by the court, and claimants' exceptions to such findings of fact, conclusions of law and decree were filed and allowed in each case, all on March 7, 1939.

[Endorsed]: Filed Apr. 5, 1939. [2]

In the District Court of the United States for the Western District of Washington, Southern Division

In Admiralty

No. 7331

SIGNAL OIL AND GAS COMPANY OF CALIFORNIA, a corporation,

Libelant,

vs.

The Motorship "STJERNEBORG",

Respondent.

LIBEL

To the Honorable Judge of the District Court of The United States for the Western District of Washington, Southern Division:

The libel of Signal Oil and Gas Company of California against the Motorship "Stjerneborg", her tackle, apparel and furniture, and against all persons lawfully intervening for their interest therein, in a case of contract, civil and maritime, alleges as follows:

I.

That the Signal Oil and Gas Company of California is a corporation duly organized and existing under and by virtue of the laws of the state of California and during all the time herein mentioned was admitted to and was doing business in the distribution of petroleum products in the states of Oregon and Washington.

II.

That on or about May 14th, 1934, at the special instance of those in charge of the Motorship "Stjerneborg" it furnished to the said vessel at the Port of Astoria, Oregon, fuel oil for use in her engines of a reasonable and agreed value of Three Thousand Eight Hundred Twenty Four Dollars and Sixty-Five Cents ($3,824.65) for which it claims a lien upon said vessel, her tackle, apparel and furniture under and by virtue of the laws of the United States governing such matters. [3]

III.

That the libelant has never received any payment with respect to such fuel oil and libelant alleges on information and belief that said vessel is now at Willapa Harbor, Washington, within the territorial jurisdiction of this Court.

IV.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and this Honorable Court.

Wherefore, libelant prays that process in due form of law according to the use of this Honorable Court in causes of admiralty and maritime jurisdiction may issue against said vessel, her tackle, apparel and furniture, and that she may be condemned and sold in answer for the debt alleged in this libel and that this court will hear the evidence which the libelant will produce in support of the allegations of this libel and having heard will enter a decree in favor of the libelant for the amount found due and will order the same to be paid and satisfied out of the proceeds of the sale of said Motorship "Stjerneborg", together with interest and with all costs of the libelant and will otherwise right and justice administer in the premises.

JOHN S. ROBINSON
Proctor for the Libelant [4]

United States of America,
Western District of Wastington—ss.

John S. Robinson being first duly sworn on oath deposes and says:

That he is proctor for the libelant in the foregoing action; that he has read the foregoing libel, knows the contents thereof, and believes the same to be true; that he has secured his information from the libelant, its officers and agents and from certain documents and papers having to do with the matter; that he makes this verification for the reason that the libelant is a foreign corporation and that none

of its officers are now within the state of Washington.

JOHN S. ROBINSON

Subscribed and sworn to before me this 11th day of May, 1935.

[Notarial Seal] GLENN J. FAIRBROOK

Notary Public in and for the State of Washington, residing at Seattle.

[Endorsed]: Filed May 11, 1935. [5]

In the District Court of the United States for the Western District of Washington, Southern Division

In Admiralty

No. 7334

SIGNAL OIL AND GAS COMPANY OF CALIFORNIA, a corporation,

Libelant,

vs.

THE MOTORSHIP "BRAND",

Respondent.

LIBEL

To the Honorable Judge of the District Court of the United States for the Western District of Washington, Southern Division:

The libel of Signal Oil and Gas Company of California against the Motorship "Brand", her tackle, apparel and furniture, and against all persons law-

fully intervening for their interest therein, in a case of contract, civil and maritime, alleges as follows:

I.

That the Signal Oil and Gas Company of California is a corporation duly organized and existing under and by virtue of the laws of the state of California and during all the time herein mentioned was admitted to and was doing business in the distribution of petroleum products in the states of Oregon, Washington and California.

II.

That on or about May 11th, 1934, at the special instance and request of those in charge of the Motorship "Brand" libelant furnished to the said vessel at Berth 166, San Pedro, California, fuel oil for use in her engines of a reasonable and agreed value of Four Thousand Six Hundred Thirty-One Dollars and Seventy-One Cents ($4,631.71) for which it claims a lien upon [6] said vessel, her tackle, apparel and furniture, under and by virtue of the laws of the United States appertaining to such matters.

III.

That libelant has never received any payment with respect to such fuel oil and libelant alleges on information and belief that said vessel is at the time of the filing of this libel at Grays Harbor, Washington, within the territorial jurisdiction of this court.

IV.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and this Honorable Court.

Wherefore, libelant prays that process in due form of law according to the use of this Honorable Court in causes of admiralty and maritime jurisdiction may issue against said vessel, her tackle, apparel and furniture, and that she may be condemned and sold in answer for the debt alleged in this libel and that this court will hear the evidence which the libelant will produce in support of the allegations of this libel and having heard will enter a decree in favor of the libelant for the amount found due and will order the same to be paid and satisfied out of the proceeds of the sale of said Motorship "Brand", together with interest and with all costs of the libelant, and will otherwise right and justice administer in the premises.

JOHN S. ROBINSON

Proctor for Libelant [7]

United States of America,
Western District of Washington—ss.

John S. Robinson being first duly sworn on oath deposes and says:

That he is proctor for the libelant in the foregoing action; that he has read the foregoing libel, knows the contents thereof; and believes the same to be true; that he has secured his information from the libelant, its officers and agents and from certain

documents and papers having to do with the matter; that he makes this verification for the reason that the libelant is a foreign corporation and that none of its officers are now within the state of Washington.

JOHN S. ROBINSON

Subscribed and sworn to before me this 5th day of June, 1935.

[Notarial Seal] GLENN J. FAIRBROOK
Notary Public in and for the State of Washington, residing at Seattle.

[Endorsed]: Filed June 5, 1935. [8]

[Title of District Court and Cause—No. 7331.]

CLAIM OF OWNERSHIP

Dampskibsselskabet, "Dannebrog", a corporation, as owner of the above named respondent motorship "Stjerneborg", her engines, machinery, tackle, apparel and furniture, intervening for its interest as such owner, appears by and through its agent, R. M. Rosenhoj, the Master of said respondent motorship, and prays that it be permitted to defend accordingly, and that the above entitled court will decree restitution to it of said motorship, and otherwise administer right and justice in the premises.

DAMPSKIBSSELSKABET,
"DANNEBROG"
By M. ROSENHOJ
Its Agent and Master of the
M.S. "Stjerneborg"

United States of America,
State of Washington,
County of King—ss.

R. M. Rosenhoj, being first duly sworn, upon oath deposes and says:

That he is the Master of the respondent motorship [11] "Stjerneborg", her engines, tackle, machinery, apparel and furniture; that as such, he is in immediate possession and control thereof.

That Dampskibsselskabet, "Dannebrog", is, and at the time of the attachment and seizure of said respondent motorship "Stjerneborg" in the above entitled cause was, the true and bona fide owner of said motorship, her engines, machinery, tackle, apparel and furniture, and as such now is, and at said time was solely entitled to the possession thereof.

That as such master and as agent for said owner he is authorized to file the foregoing Claim of Ownership.

M. ROSENHOJ

Subscribed and sworn to before me this 15th day of May, 1935.

[Seal] (sgd) LANE SUMMERS
Notary Public in and for the State of Washington, residing at Seattle.

[Service acknowledged. 5/15/35.]

[Endorsed]: Filed May 16, 1935. [12]

[Title of District Court and Cause—No. 7334.]

CLAIM OF OWNERSHIP

Comes now Aktieselskabet Borgestad, a corporation organized and existing under and by virtue of the laws of Norway, intervening for its interest in the motorship "Brand", her engines, tackle, apparel and furniture, respondent, and makes claim to said motorship as the same lies attached by the United States Marshal under process of the above entitled court, issued as prayed by libel herein; and said Aktieselskabet Borgestad alleges that it was in possession of said motorship at the time of the service of said process, and that it then was and now is the sole and bona fide owner of said motorship; that no other corporation, firm or person is the owner thereof; and further alleges that at times material to libelant's cause of action as shown by its said libel, said respondent motorship was under time charter to Vestindisk Handelskompagni (West Indian Trading Company) of Copenhagen, Denmark.

Wherefore, Aktieselskabet Borgestad prays that it be [13] permitted to defend said libel.

Dated this 6th day of June, 1935, at Seattle, Washington.

AKTIESELSKABET BORGESTAD,
a corporation,
By K. WIIG
Master of M.S. "Brand"

United States of America,
State of Washington,
County of King—ss.

K. Wiig, being first duly sworn, upon oath deposes and says:

That he is the Master of the motorship "Brand".

That Aktieselskabet Borgestad is a corporation organized and existing under and by virtue of the laws of Norway.

That as Master of the respondent M.S. "Brand" he is in possession thereof for and in behalf of said Aktieselskabet Borgestad, the owner thereof, and that he is authorized to make and verify the foregoing claim; that he has read the same, knows the contents thereof, and believes the same to be true.

K. WIIG

Subscribed and sworn to before me this 7th day of June, 1935.

H. G. FITCH
Notary Public in and for the State of Washington, residing at Tacoma.

[Endorsed]: Filed June 7, 1935. [14]

[Title of District Court and Cause—No. 7331.]

RELEASE BOND

Know All Persons by These Presents: That we, Dampskibsselskabet, "Dannebrog", a corporation, as Principal, and National Surety Corporation, a

corporation, authorized to transact a surety business within the State of Washington, as Surety, are held and firmly bound unto A. J. Chitty, as United States Marshal, for the benefit of whom it may concern, in the full sum of Five Thousand Dollars ($5,000.00), to be paid to said United States Marshall, his executors, administrators or sucessors, for the payment of which well and truly to be made we bind ourselves, our successors and assigns, jointly and severally firmly by these presents.

Signed, sealed and delivered this 15th day of May, 1935.

Whereas, libel in the above entitled cause, civil and maritime, has heretofore been filed in the above entitled court by libelant above named against the above named respondent [19] vessel, her engines, tackle, apparel and furniture, for causes and reasons in said libel alleged;

Whereas, said respondent vessel now lies seized and attached in the custody of said Marshal, by virtue of process issued upon said libel;

Whereas, said Principal is filing in the above entitled cause Claim of Ownership with respect to said respondent vessel, together with the usual Stipulation for Costs, and is applying for a release of said vessel, in accordance with the admiralty rules and practices of the above entitled court;

Now, Therefore, the condition of this obligation is such that if said Principal shall abide and answer final decree in the above entitled cause, and shall

pay the money awarded (not exceeding, however, said full sum), then this obligation shall be void; otherwise the same shall remain in full force.

(Principal)
DAMPSKIBSSELSKABET,
"DANNEBROG",
By M. ROSENHOJ,
Its Agent and Master of said
M.S. "Stjerneborg."

(Surety)
[Seal] NATIONAL SURETY
CORPORATION,
a corporation,
By J. H. LOBDELL,
Its Attorney-in-fact.

United States of America,
State of Washington,
County of King—ss.

This is to certify that on this 15th day of May, 1935, before me, the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared [20] R. M. Rosenhoj, to me known to be the Master of the motorship "Stjerneborg", and as such the agent of Dampskibsselskabet, "Dannebrog", the corporation that executed the within and foregoing bond as Principal; and acknowledged the said bond to be the free and voluntary act and deed of said principal for the uses and purposes therein mentioned, and on oath stated that he was authorized to exe-

cute said bond as agent and as Master of said motorship.

In Witness Whereof I have hereunto set my hand and official seal the day and year in this certificate first above written.

[Seal] LANE SUMMERS (sgd)
Notary Public in and for the State of Washington, residing at Seattle.

United States of America,
State of Washington,
County of King—ss.

This Is to Certify That on this 15th day of May, 1935, before me, the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared J. H. Lobdell, to me known to be the attorney-in-fact of National Surety Corporation, a corporation, that executed the within and foregoing bond, and acknowledged the same to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said bond as attorney-in-fact, and that the seal affixed is the corporate seal of said corporation.

In Witness Whereof I have hereunto set my hand and official seal the day and year in this certificate first above written.

LANE SUMMERS, (sgd)
Notary Public in and for the State of Washington, residing at Seattle.

The foregoing bond approved and notice of bonding waived.

JOHN S. ROBINSON, (sgd)
Proctor for Libelant

The foregoing bond approved.

EDWARD E. CUSHMAN,
U. S. District Judge

[Endorsed]: Filed May 16, 1935. [21]

[Title of District Court and Cause—No. 7334.]

RELEASE BOND

Know All Persons by These Presents:

That Vestindisk Handelskompagni (West Indian Trading Company) of Copenhagen, Denmark, as Principal, and Pacific Indemnity Company, a corporation authorized to transact a surety business within the State of Washington, as surety, are held and firmly bound unto A. J. Chitty, as United States Marshal, for the benefits of whom it may concern, in the full sum of Fifty-five Hundred Dollars ($5500.00), to be paid to said United States Marshal or his successors, for the payment of which well and truly to be made we bind ourselves, our successors and assigns, jointly and severally firmly by these presents.

Whereas, libel in the above entitled cause, civil and maritime, has heretofore been filed in the above entitled court by libelant above named against the above named respondent motorship, her engines,

tackle, apparel and furniture, for causes and reasons in said libel alleged; [22]

Whereas, said vessel now lies seized and attached in the custody of said Marshal, by virtue of process issued upon said libel;

Whereas, claim of ownership and the usual stipulation for costs being filed herewith, application will be made hereon for the release of said respondent motorship in accordance with the admiralty rules and practice of the above entitled court;

Now, Therefore, the condition of this obligation is such that if said Principal shall abide and answer final decree in the above entitled cause, and shall pay the money awarded (not exceeding, however, said full sum) then this obligation shall be void; otherwise the same shall remain in full force.

Signed, sealed and delivered this 6th day of June, 1935, at Seattle.

(Principal)
VESTINDISK HANDELSKOMPAGNI,
(West Indian Trading Company)
By HAYDEN, MERRITT,
SUMMERS & BUCEY,
Its Proctors.

(Surety)
[Seal] PACIFIC INDEMNITY
COMPANY.
By E. A. STRICKLER.
Its Attorney-in-fact.

United States of America,
State of Washington,
County of King—ss.

This Is To Certify that on this 6th day of June, 1935, before me, the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared E. A. Strickler, to me known to be the attorney-in-fact of Pacific Indemnity Company, a corporation, that executed the within and foregoing bond, and acknowledged the same to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said bond as attorney-in-fact, and that [23] the seal affixed is the corporate seal of said corporation.

In Witness Whereof, I have hereunto set my hand and official seal the day and year in this certificate first above written.

[Seal] LANE SUMMERS,
Notary Public in and for the State of Washington, residing at Seattle.

The foregoing bond approved and notice of bonding waived.

JOHN S. ROBINSON,
Proctor for Libelant.

The foregoing bond approved.

EDWARD E. CUSHMAN,
U. S. District Judge.

[Endorsed]: Filed June 7, 1935. [23A]

[Title of District Court and Cause—No. 7331.]

ANSWER

To the Honorable Judge of the District Court of the United States for the Western District of Washington, Southern Division:

The answer of Dampskibsselskabet Dannebrog, a corporation, claimant, to the libel in the above entitled cause of Signal Oil and Gas Company of California, a corporation, admits, denies and alleges as follows:

I.

Answering Article I, claimant admits the allegations thereof.

II.

Answering Article II, claimant denies each and all of the allegations thereof, excepting only those allegations hereinafter expressly admitted.

Claimant admits that on or about May 14, 1934, at the port of Astoria, state of Oregon, libelant furnished to the motorship "Stjerneborg" diesel oil of the approximate value of $3824.65. Claimant admits that libelant claims a lien upon said motorship, but particularly denies that any lien exists. [24]

III.

Answering Article III, claimant has not sufficient information or knowledge upon which to form a belief as to the truth or falsity of the allegation to the effect that libelant has never received payment

for such diesel oil, and therefore denies such allegation upon information and belief.

Claimant admits that at the time said libel was filed and process thereunder served said motorship was within the territorial jurisdiction of the above entitled court.

IV.

Answering Article IV, claimant denies each and every allegation therein contained, excepting only those allegations hereinafter expressly admitted.

Claimant admits that the above entitled cause is within the admiralty and maritime jurisdiction of the above entitled court.

For affirmative defenses to said libel, claimant alleges:

A-I.

That while a certain quantity of diesel oil was furnished by libelant to said motorship on or about May 14, 1934, at the port of Astoria, state of Oregon, it was not so furnished upon the order of the owner of said motorship or upon the order of a person or concern authorized by the owner, but, on the contrary, was so furnished upon the order of W. L. Conyn & Sons, a corporation, by libelant known to be the charterer of said motorship, under a certain charter party which provided in effect that such charterer should itself pay for all coal, oil or other fuel. [25]

A-II.

That the diesel oil so furnished on or about May 14, 1934, at the port of Astoria, state of Oregon, by libelant to said motorship was not a lienable necessary since, when ordered and received, it was not essential to the voyage then contemplated by said motorship, but was desired by the charterer merely to comply with its obligations under said charter party.

A-III.

That long prior to such diesel oil being so furnished by libelant to said motorship on or about May 14, 1934, at the port of Astoria, state of Oregon, a general contract for the sale and purchase of oil was entered into by libelant, as seller, and Anglo Canadian Shipping Co., Ltd., as buyer, which general contract was so modified as to permit said W. L. Comyn & Sons, a corporation, the charterer above named, to make purchases thereunder. That the diesel oil so furnished on or about May 14, 1934, at the port of Astoria, state of Oregon, by libelant to said motorship was ordered by said W. L. Comyn & Sons, a corporation, as buyer under said general contract, and sold by libelant and delivered to said motorship upon the personal credit and financial responsibility of said W. L. Comyn & Sons, a corporation, and not upon the credit of said motorship.

A-IV.

That on or about July 7, 1934, in recognition of then existing financial difficulties of W. L. Comyn

& Sons, a corporation, and in protection of indebtedness owing by that concern to libelant in the total sum of approximately $18,252.95 for oil previously supplied to various vessels upon the order of W. L. Comyn & Sons, a corporation, under said general contract, [26] libelant required and accepted under the provisions of a certain "pledge agreement" from W. L. Comyn & Sons, a corporation, an assignment, transfer and pledge of certain collateral therein described (subject to the prior rights of the First National Bank of Seattle) to secure payment to libelant of all said indebtedness in full, including said sum of $3824.65 on account of oil delivered to said motorship "Stjerneborg" on or about May 14, 1934, at the port of Astoria, state of Oregon, for which in the present cause libelant asserts a lien.

That subsequently, the collateral hypothecated under such pledge agreement having been liquidated and sold for an amount in excess of indebtedness owing by W. L. Comyn & Sons, a corporation, to the First National Bank of Seattle, libelant, notwithstanding its right to apply such excess in reduction of said sum of $3824.65, released such excess to W. L. Comyn & Sons, a corporation.

That if theretofore any lien existed against said motorship in favor of libelant, as claimed by its said libel, such lien has been wholly waived.

A-V.

That under date of August 10, 1934, for the benefit of W. L. Comyn & Sons, a corporation, libelant subscribed to a "creditors' agreement", for the purpose of assisting W. L. Comyn & Sons, a corporation, in meeting its financial difficulties, wherein libelant agreed not to enforce prior to September 1, 1935, by legal proceedings or otherwise, directly or indirectly, payment of indebtedness owing to libelant by W. L. Comyn & Sons, a corporation, inclusive of said sum of $3824.65 for oil supplied to said motorship "Stjerneborg" on or about May 14, 1934, at the port [26A] of Astoria, state of Oregon.

That if theretofore any lien existed against said motorship in favor of libelant, as claimed by its said libel, such lien has been wholly waived.

Wherefore, said libel having been fully answered, claimant prays that this court will adjudicate said motorship to be free and clear of any lien, will decree dismissal of said libel with prejudice and with costs and disbursements hereinafter to be taxed in favor of claimant and against libelant, and will award such other relief to claimant as may be just and proper.

HAYDEN, MERRITT,
SUMMERS & BUCEY,
Proctors for Claimant.

United States of America,
State of Washington,
County of King—ss.

Lane Summers, being first duly sworn, upon oath deposes and says:

That he is one of the proctors for claimant which is a foreign corporation having no officer or agent within the State of Washington, for which reason he makes this verification; that he has read the foregoing Answer, knows the contents thereof, and believes the same to be true.

LANE SUMMERS.

Subscribed and sworn to before me this 13th day of May, 1937.

[Seal] FRED S. MERRITT,
Notary Public in and for the State of Washington, residing at Seattle.

[Service acknowledged May 13, 1937.]

[Endorsed]: Filed May 14, 1937. [27]

[Title of District Court and Cause—No. 7334.]

ANSWER

To the Honorable Judge of the District Court of the United States for the Western District of Washington, Southern Division:

The Answer of Aktieselskabet Borgestad, a corporation, claimant, to the libel in the above entitled

cause of Signal Oil and Gas Company of California, a corporation, admits, denies and alleges as follows:

I.

Answering Article I, claimant admits the allegations thereof.

II.

Answering Article II, claimant denies each and all of the allegations thereof, excepting only those allegations hereinafter expressly admitted.

Claimant admits that on or about May 11, 1934, at the port of San Pedro, state of California, diesel oil of the [28] approximate value of $4631.71 was received by the motorship "Brand". Claimant admits that libelant claims a lien upon said motorship, but particularly denies that any lien exists.

III.

Answering Article III, claimant has not sufficient information or knowledge upon which to form a belief as to the truth or falsity of the allegation to the effect that libelant has never received payment for such diesel oil, and therefore denies such allegation upon information and belief.

Claimant admits that at the time said libel was filed and process thereunder served said motorship was within the territorial jurisdiction of the above entitled court.

IV.

Answering Article IV, claimant denies each and every allegation therein contained, excepting only those allegations hereinafter expressly admitted

Claimant admits that the above entitled cause is within the admiralty and maritime jurisdiction of the above entitled court.

For affirmative defenses to said libel, claimant alleges:

A-I.

That while a certain quantity of diesel oil was furnished by libelant to said motorship on or about May 11, 1934, at the port of San Pedro, state of California, it was not so furnished upon the order of the owner of said motorship or upon the order of a person or concern authorized by the owner, but, on the contrary, was so furnished upon the order of W. L. Comyn & [29] Sons, a corporation, by libelant known to be the charterer of said motorship, under a certain charter party which provided in effect that such charterer should itself pay for all coal, oil or other fuel.

A-II.

That long prior to such diesel oil being so furnished by libelant to said motorship on or about May 11, 1934, at the port of San Pedro, state of California, a general contract for the sale and purchase of oil was entered into by libelant, as seller, and Anglo Canadian Shipping Co., Ltd., as buyer, which general contract was so modified as to permit said W. L. Comyn & Sons, a corporation, the charterer above named, to make purchases thereunder. That the diesel oil so furnished on or about

May 11, 1934, at the port of San Pedro, state of California, by libelant to said motorship was ordered by said W. L. Comyn & Sons, a corporation, as buyer under said general contract, and sold by libelant and delivered to said motorship upon the personal credit and financial responsibility of said W. L. Comyn & Sons, a corporation, and not upon the credit of said motorship.

A-III.

That on or about July 7, 1934, in recognition of then existing financial difficulties of W. L. Comyn & Sons, a corporation, and in protection of indebtedness owing by that concern to libelant in the total sum of approximately $18,252.95 for oil previously supplied to various vessels upon the order of W. L. Comyn & Sons, a corporation, under said general contract, libelant required and accepted under the provisions of a certain "pledge agreement" from W. L. Comyn & Sons, a corporation, an assignment, transfer and pledge of certain collateral therein [29A] described (subject to the prior rights of the First National Bank of Seattle) to secure payment to libelant of all said indebtedness, including said sum of $4631.71 on account of oil delivered to said motorship "Brand" on or about May 11, 1934, at the port of San Pedro, state of California, for which in the present cause libelant asserts a lien.

That subsequently, the collateral hypothecated under such pledge agreement having been liquidated

and sold for an amount in excess of indebtedness owing by W. L. Comyn & Sons, a corporation, to the First National Bank of Seattle, libelant, notwithstanding its right to apply such excess in reduction of said sum of $4631.71, released such excess to W. L. Comyn & Sons, a corporation.

That if theretofore any lien existed against said motorship in favor of libelant, as claimed by its said libel, such lien has been wholly waived.

A-IV.

That under date of August 10, 1934, for the benefit of W. L. Comyn & Sons, a corporation, libelant subscribed to a "creditors' agreement", for the purpose of assisting W. L. Comyn & Sons, a corporation, in meeting its financial difficulties, wherein libelant agreed not to enforce prior to September 1, 1935, by legal proceedings or otherwise, directly or indirectly, payment of indebtedness owing to libelant by W. L. Comyn & Sons, a corporation, inclusive of said sum of $4631.71 for oil supplied to said motorship "Brand" on or about May 11, 1934, at the port of San Pedro, state of California.

That if theretofore any lien existed against said motorship in favor of libelant, as claimed by its said libel, [30] such lien has been wholly waived.

Wherefore, said libel having been fully answered, claimant prays that this court will adjudicate said motorship to be free and clear of any lien, will decree dismissal of said libel with prejudice and

with costs and disbursements hereinafter to be taxed in favor of claimant and against libelant, and will award such other relief to claimant as may be just and proper.

HAYDEN, MERRITT,
SUMMERS & BUCEY,
Proctors for Claimant.

United States of America,
State of Washington,
County of King—ss.

Lane Summers, being first duly sworn, upon oath deposes and says:

That he is one of the proctors for claimant which is a foreign corporation having no officer or agent within the State of Washington, for which reason he makes this verification; that he has read the foregoing Answer, knows the contents thereof, and believes the same to be true.

LANE SUMMERS.

Subscribed and sworn to before me this 13th day of May, 1937.

[Seal] FRED S. MERRITT,
Notary Public in and for the State of Washington, residing at Seattle.

[Endorsed]: Filed May 14, 1937. [30A]

[Title of District Court and Causes—Consolidated.]

STIPULATION OF FACTS

To serve in lieu of testimony as the factual basis for determination by the court of the question of liability in the above entitled causes, consolidated solely for the purpose of trial,

It is hereby Stipulated by libelant above named and by both claimants above named that, in addition to facts admitted by [33] the pleadings or by the record elsewhere, certain other agreed facts may be considered by the court, to-wit:

(1) That libelant, a California corporation, as seller, on or about the 26th of September, 1932, entered into a written contract (Copy-Exhibit A) with Anglo Canadian Shipping Coy., Ltd., a Canadian corporation, as buyer, for the sale and purchase of fuel oil for delivery during a certain period to any vessels "which the buyer may own, charter, operate or be agents for". That under such contract various sales and purchases of fuel oil were made by such seller and buyer, not herein directly material.

(2). That on or about the 30th day of March, 1933, upon telephone request from W. L. Comyn & Sons, a Washington corporation, that 565 tons of Diesel oil be supplied under said contract to the vessel "Nyhorn" at San Pedro, California, libelant, by telegram of March 30, 1933, (Copy-Exhibit B) solicited authority for such sale under said contract, and by telegram dated April 1, 1933 (Copy-Exhibit

C). received such authority from Anglo Canadian Shipping Coy., Ltd.

That, as a result, a quantity of fuel oil was delivered by libelant to the vessel "Nyhorn" on or about the 2nd day of April, 1933, for which invoice was made by libelant to "M.S. Nyhorn and Owners, C/o Anglo Canadian Shipping Company, C/o W. L. Comyn & Sons, Seattle, Washington", and for which payment was made by W. L. Comyn & Sons on or about the 6th day of April, 1933.

That later, on or about the 16th and the 17th days of May, 1933, on the order of W. L. Comyn & Sons, two deliveries of fuel oil were made by libelant to the vessel "Stjerneborg" [34] at San Pedro; that covering such deliveries libelant made two invoices addressed to "M. S. Stjerneborg & Owners, C/o Anglo Canadian Shipping Coy., 425 Howe Street, Vancouver, B. C. (copy-Exhibit 1 & Ex. 2) which were mailed to W. L. Comyn & Sons by letter dated the 27th day of June, 1933 (Copy-Ex. 3) by whom the invoices were paid on or about the 6th day of July, 1933.

(3) That on or about the 19th day of May, 1933, said contract (Exhibit A) was modified "to include the fuel oil requirements of any and all vessels owned, chartered and or operated" by W. L. Comyn & Sons, and was also modified in other respects by understanding evidenced in letters from libelant to Anglo Canadian Shipping Coy., Ltd. (Copy-Exhibit D and Exhibit E).

That subsequently such modification of said contract was clarified and extended by letter dated the 31st day of May, 1933, from Anglo Canadian Shipping Coy., Ltd. to libelant (Copy-Exhibit F), instructing that libelant "bill Messrs. W. L. Comyn & Sons direct for the quantity (of oil) which may be used" by it; that such modification was further clarified and extended by letter dated the 25th day of July, 1933, from libelant to Anglo Canadian Shipping Coy., Ltd., of which a copy was passed to W. L. Comyn & Sons (Copy-Exhibit G).

That under said contract as so modified W. L. Comyn & Sons became entitled to make purchases thereunder upon its own order and credit, independent of Anglo Canadian Shipping Coy., Ltd.

(4) That under said contract libelant sold, and W. L. Comyn & Sons bought oil delivered to various vessels as directed by W. L. Comyn & Sons; that the attached tabulation (Exhibit H) lists the names of vessels to which such deliveries of oil were [35] made, the dates of invoices of purchase price by libelant, and the dates of payments therefor by W. L. Comyn & Sons.

(5) That during the period covered by said contract libelant maintained a sales register in which were kept data as to fuel oil sales to all its customers generally, listed under appropriate headings, being as follows: "Date of Invoice"; Date of Payment"; "Date of Delivery"; "Invoice Number"; "Barrels"; "Value $ "; "Customer's Name."

That from the first delivery by libelant under said contract on the 9th day of October, 1932, until the 2nd day of February, 1934, all sales, whether made to Anglo Canadian Shipping Coy., Ltd., or W. L. Comyn & Sons, were entered under the name of Anglo Canadian Shipping Coy., Ltd., in said register; that on the 2nd day of February, 1934, the name of W. L. Comyn & Sons was added in said sales register, and sales made to it were entered therein under its name.

(6) That during the life of said contract certain correspondence passed between libelant and W. L. Comyn & Sons relative to invoices, to credit, and to payment, which included letters and telegrams as follows:

Letter to libelant dated July 28, 1933 (Copy-Ex. I)

Letter from libelant dated Oct. 5, 1933 (Copy-Ex. J)

Letter to libelant dated Dec. 14, 1933 (Copy-Ex. K)

Letter from libelant dated Jan. 4, 1934 (Copy-Ex. L)

Letter from libelant dated Jan. 18, 1934 (Copy-Ex. M)

Wire from libelant dated Jan. 20, 1934 (Copy-Ex. N)

Wire to libelant dated Jan. 20, 1934 (Copy-Ex. O)

Letter to libelant dated Jan. 22, 1934 (Copy-Ex. P) [36]

Letter from libelant dated Jan. 23, 1934
(Copy-Ex. Q)
Wire to libelant dated Feb. 6, 1934
(Copy-Ex. R)
Letter to libelant dated Feb. 7, 1934
(Copy-Ex. S)
Letter from libelant dated Feb. 9, 1934
(Copy-Ex. T)
Letter from libelant dated Mar. 20, 1934
(Copy-Ex. U)
Letter to libelant dated Mar. 24, 1934
(Copy-Ex. V)
Letter to libelant dated Mar. 30, 1934
(Copy-Ex. W)
Letter to libelant dated Apr. 10, 1934
(Copy-Ex. X)
Letter from libelant dated Apr. 20, 1934.
(Copy-Ex. Y)
Letter to libelant dated Apr. 24, 1934
(Copy-Ex. Z)
Letter to libelant dated Apr. 30, 1934
(Copy-Ex. A-1)

(7) That when buying oil from libelant under said contract, orders by W. L. Comyn & Sons were customarily transmitted by telegram or letter to libelant at its Los Angeles office, delivery being made for libelant by the Standard Oil Company, or other supplier, to a designated vessel, from whose chief engineer or master a receipt was usually taken, on the basis of which W. L. Comyn & Sons

was later invoiced for the purchase price. That sometimes disclosing and sometimes not disclosing the relationship of W. L. Comyn & Sons to the vessel, such orders include letters, telegrams and acknowledgments thereof, as follows:

Comyn's letter (John Bakke) dated Jan. 2, 1934 (Copy-Ex. B-1)

Comyn's letter (Nordpol) dated Jan. 18, 1934 (Copy-Ex. C-1)

Comyn's letter (Zaanland) dated Jan. 22, 1934 (Copy-Ex. D-1)

Comyn's wire (Amstelland) dated Feb. 6, 1934 (Copy-Ex. E-1)

Comyn's letter (Amstelland) dated Feb. 8, 1934 (Copy-Ex. F-1)

Libelant's acknowledgment (Amstelland) dated Feb. 9, 1934 (Copy-Ex. G-1)

Comyn's wire (Nyhorn) dated Feb. 14, 1934 (Copy-Ex. H-1)

Comyn's letter (Nyhorn) dated Feb. 14, 1934 (Copy-Ex. I-1) [37]

Comyn's letter (Nyhorn) dated Feb. 26, 1934 (Copy-Ex. J-1)

Comyn's letter (Stjerneborg) dated Mar. 6, 1934 (Copy-Ex. K-1)

Comyn's letter (Nordhval) dated Mar. 19, 1934 (Copy-Ex. L-1)

Libelant's acknowledgment (Nordhval) dated Mar. 22, 1934 (Copy-Ex. M-1)

Comyn's letter (Brand) dated May 1, 1934 (Copy-Ex. N-1)

Comyn's letter (Stjerneborg) dated May 1, 1934 (Copy-Ex. O-1)

Comyn's wire (Sunnanvik) dated May 5, 1934 (Copy-Ex. P-1)

Comyn's letter (Nordpol) dated May 21, 1934 (Copy-Ex. Q-1)

Comyn's letter (Samuel Bakke) dated May 29, 1934 (Copy-Ex. R-1)

Comyn's letter (Belpamela) dated June 5, 1934 (Copy-Ex. S-1)

Libelant's acknowledgment (Belpamela) dated June 11, 1934 (Copy-Ex. T-1)

Comyn's letter (Aurora) dated June 11, 1934 (Copy-Ex. U-1)

(8) That under said contract libelant caused to be delivered to the vessel "Brand", on the order of W. L. Comyn & Sons, a quantity of fuel oil at Point Wells, Washington, on or about the 26th day of April, 1934; that although written order for such quantity of oil has not been located, a delivery receipt on that date was signed by the chief engineer of the vessel, upon which he made endorsement reading: "For time charterer's account" (photostatic copy-Ex. A-2), and later libelant issued its invoice for $638.57, addressed to "M.S. Brand and Owners, C/o W. L. Comyn & Sons, 427 Colman Bldg., Seattle, Washington" (Copy-Ex. B-2).

That under said contract libelant caused to be delivered to the vessel "Brand", on the order of W. L. Comyn & Sons, a quantity of fuel oil at San Pedro, California, on or about the 11th day of May, 1934; that this quantity of oil was ordered by letter from W. L. Comyn & Sons dated May 1, 1934 (Copy-Ex. C-2), and was acknowledged in letter by libelant, dated May 7, 1934 (Copy-Ex. D-2); [38] that a delivery receipt on May 11, 1934, was signed by the chief engineer of the vessel, upon which he made endorsement reading: "For time charterer's account" (Photostatic Copy-Ex. F-2), and later libelant issued its invoice for $3993.14, addressed to MS Brand and Owners, C/o W. L. Comyn & Sons, 427 Colman Bldg., Seattle, Washington" (Copy-Ex. G-2).

That said deliveries, as evidenced by said delivery receipts (Ex. A-2 and Ex. F-2) and by said invoices (Ex. B-2 and Ex. G-2), in the total sum of $4631.71, constitute the claim in suit, upon which libelant seeks recovery against the respondent vessel "Brand".

(9) That under said contract libelant caused to be delivered to the vessel "Stjerneborg", on the order of W. L. Comyn & Sons, a quantity of fuel oil at Astoria, Oregon, on or about the 15th day of May, 1934; that this quantity of oil was ordered by W. L. Comyn & Sons in letter dated May 1, 1934, reciting that "the M S Stjerneborg which is at present on our time charter will be loading a cargo of

lumber to China and Japan about the middle of May at Grays Harbor", and requesting delivery of oil at Aberdeen (Copy-Ex. H-2); that to this letter libelant replied by telegram, dated May 7, 1934, suggesting oil delivery at Astoria (Copy-Ex. I-2); that by letter of May 7, 1934, W. L. Comyn & Sons acquiesced in libelant's suggestion for oil delivery at Astoria (Copy-Ex. J-2); that W. L. Comyn & Sons notified libelant of the arrival of the vessel at Astoria by telegram dated May 14, 1934 (Copy-Ex. K-2); that by letter dated May 14, 1934, libelant acknowledged advice from W. L. Comyn & Sons as to the arrival of the vessel at Astoria for oil (Copy-Ex. L-2); that on [39] May 15, 1934, delivery receipt was signed by the chief engineer and the master of the vessel (Photostatic copy-Ex. M-2), and later libelant issued its invoice for $3824.65, addressed to "MS Stjerneborg and Owners, C/o W. L. Comyn & Sons, 427 Colman Bldg., Seattle, Washington" (Copy-Ex. N-2).

That said delivery as evidenced by said delivery receipt (Ex. M-2) and by said invoice (Ex. N-2) in the sum of $3824.65, constitute the claim in suit, upon which libelant seeks recovery against the respondent vessel "Stjerneborg".

(10) That such deliveries of oil to the vessel "Brand" and to the vessel "Stjerneborg" were not made upon the order of the master or the chief engineer thereof, but upon the order of W. L. Comyn & Sons.

That at the time of such orders for and such deliveries of oil on account of which libelant seeks recovery, W. L. Comyn & So. s was related to said vessels only as charterer, under current "Brand" charter party (Photostatic copy-Ex. O-2) and under current "Stjerneborg" charter party (Photostatic copy-Ex. P-2).

That both said charter parties, among other provisions, contained the following:

> "2. That the Charterers shall provide and pay for all the Coals except as otherwise agreed, Port Charges, Pilotages, Agencies, Commissions, Consular Charges (except those pertaining to the Captain, Officers or Crew), and all other usual expenses except those before stated, but when the vessel puts into a port for causes for which steamer is responsible, then all such charges incurred shall be paid by owners. * * *
>
> "3. That the Charterers shall accept and pay for all Coal in the Steamer's Bunkers and the Owners shall, on expiration of this Charter Party, pay for all Coal left in the Bunkers at Ninety Cents (90c) U. S. Currency per barrel at the respective places where she is delivered to them." * * *
>
> "29. Wherever the word 'Coal' may appear in this charter party it shall be understood to mean 'Diesel Oil Fuel', and wherever the word 'Steamer' may appear, it shall be understood to mean 'Motorship'." [40]

That said "Brand" charter party also contained the following clause:

"13. Quantity of bunkers on delivery as on board. Bunkers on redelivery not less than 300 tons."

That said "Stjerneborg" charter party also contained the following clause:

"13. Quantity of bunkers on delivery as on board. Bunkers on redelivery not less than 400 tons."

That both before and after said contract (Exhibit A) was modified to include W. L. Comyn & Sons, it was in business not as a vessel owner, but as a commission merchant, a freight contractor and broker, and as an operator of vessels, sometimes for owners' account and sometimes for charterer's account; that the character of the business of W. L. Comyn & Sons was either known to or easily ascertainable by libelant.

(11) That as a result of a strike of longshoremen, effective in most ports of the Pacific Coast, few vessels loaded or discharged cargo, and few vessels moved in commerce from the middle of May, 1934, to the end of July, 1934; that partly in consequence of this condition, W. L. Comyn & Sons became financially embarrassed, and gradually delayed from time to time in making payments to libelant for oil bought under said contract.

(12) That from the 15th day of May, 1934, the date of receiving oil at Astoria, Oregon, to the 14th

day of May, 1935, the date of seizure under process in rem in this proceeding, the vessel "Stjerneborg" arrived at and departed from various ports of call on the Pacific Coast of North America (List-Ex. Q-2).

That from the 14th day of May, 1934, the date of receiving oil at San Pedro, California, to the 5th day of June, [41] 1935, the date of seizure under process in rem in this proceeding, the vessel "Brand" arrived at and departed from various ports of call on the Pacific Coast of North America (List-Ex. R-2).

(13) That W. L. Comyn & Sons, to avoid possible seizure of certain vessels under libel then threatened by libelant, and to fortify its credit, on the 7th day of July, 1934, executed as pledgor, with libelant as second pledgee, a certain "Pledge Agreement" (Copy-Ex. S-2) covering certain securities, subject to prior pledge to the First National Bank of Seattle, to secure, among other obligations, the indebtedness of W. L. Comyn & Sons to libelant, for which libelant seeks to recover herein, on account of oil delivered to the vessel "Stjerneborg", in the sum of $3824.65, and on account of oil delivered to the vessel "Brand" in the sum of $4631.71. That such "Pledge Agreement" contained the following language:

> "Nothing herein contained shall preclude the pledgee from collecting on any indebtedness or obligation hereby secured without resorting to

said collateral. Nothing herein contained shall constitute any release or waiver of any lien which Signal Oil and Gas Company, a Delaware corporation, may have on or against the vessels hereinabove described for fuel oil supplied to such vessels."

That thereafter from time to time libelant authorized and permitted further loans and advances by the First National Bank of Seattle either to or for W. L. Comyn & Sons against said collateral in the sum of $900, and authorized and permitted to be released to W. L. Comyn & Sons proceeds from the liquidation of such collateral securities in the sum of $1474.96, by the execution of a release, dated September 22, 1934, of the First National Bank of [42] Seattle and W. L. Comyn & Sons from said pledge agreement.

(14) That practically contemporaneously with the execution of libelant's release of said "Pledge Agreement", it signed "Creditors' Agreement" (Copy Ex. T-2), thereby joining with other creditors in granting to W. L. Comyn & Sons extension of time to meet all of its obligations, as provided therein; that such "Creditors' Agrement" contained the following language:

"This agreement is signed by Signal Oil and Gas Company with the understanding that nothing therein contained shall constitute any release or waiver of any lien or the right to a lien which Signal Oil and Gas Company, a Delaware corporation, has or may have on or against

any vessels for supplies furnished said vessels, or any of them, while said vessels, or any of them, were entrusted to the management of the debtor named in said agreement, provided, however, that Signal Oil and Gas Company agrees not to enforce such liens against any of said vessels for the period this agreement is in effect unless and excepting enforcement is necessary to prevent the loss of said lien rights by destruction, sale or other disposition of said vessels, or any of them."

(15) That W. L. Comyn & Sons, in recognition of its insolvency, released libelant from "Creditors' Agreement" by letter dated April 3, 1935 (Copy-Ex. U-2).

(16) That the quantity of oil on board the vessel "Stjerneborg" at the time of arrival at Astoria, Oregon, on May 15, 1934, prior to receiving oil then and there from libelant, was 91 tons, as shown by statement of the master dated May 23, 1934 (Copy-Ex. V-2).

That the quantity of oil received by the vessel "Stjerneborg" then and there was 501 tons, as shown by abstract of log, certified by the master and first officer (Copy-Ex. W-2). [43]

That on or about July 5, 1934, at Vancouver, B. C., the vessel "Stjerneborg" received 69.82 tons of oil—such quantity, however, not being supplied by or for libelant.

That the quantity of oil remaining on board the vessel "Stjerneborg" on August 15, 1934, upon her

redelivery under the then current charter party by W. L. Comyn & Sons as charterer to the owner at Sydney, Australia, was 402 tons, as shown by statement signed by the master and first officer of the vessel (Copy-Ex. X-2) and as shown by certificate of redelivery signed by the master and Comyn, Smith & Company, Agents for W. L. Comyn & Sons at Sydney (Copy-Ex. Y-2).

GLENN J. FAIRBROOK
substituted for
JOHN S. ROBINSON,
Proctors for Libelant
above named.

HAYDEN, MERRITT,
SUMMERS & BUCEY,
Proctors for Claimants
above named. [44]

EXHIBIT A

FUEL OIL CONTRACT

This Contract, dated the twenty-sixth day of September, 1932, between the Signal Oil and Gas Company, a corporation, hereinafter called the Seller, and Anglo Canadian Shipping Coy. Ltd. of Canada, hereinafter called the Buyer.

Witnesseth That:

Article I.

Period and Quantity

The Seller hereby sells to the Buyer and the Buyer buys from the Seller for delivery during a

period of Fifteen months beginning October 1st, 1932, and ending December 31st, 1933, all Fuel Oil and Fuel Oil 27 Plus up to and not exceeding a total of One Hundred eighty thousand (180,000) barrels, at rate of not more than 20,000 barrels during any one calendar month, which may be required by the buyer, during said period for the current fuel purposes of any vessels which the buyer may own, charter, operate or be agents for during said period, the said oil, up to the quantity specified to be the fuel exclusively used during the said period for the said purposes.

This contract shall remain in full force and effect from and after the expiration date above named until one hundred and eighty days' written notice shall have been given by one party to the other of its intention to terminate the same, provided, that such notice shall not be given by either party prior to the expiration date, above named. Seller shall not be obligated to deliver in any one month during such additional period a quantity greater than the monthly quantity specified above.

Article II.

Definition of Barrel and Gallon

The term "Barrel" when used herein, designates and is equivalent to forty-two (42) American bulk gallons, and the term "Gallon" when used herein, designates and is equivalent to two hundred and thirty-one (231) cubic inches.

Article III.

Quality of Oil

The said Fuel oil shall be the Seller's commercial grade, in accordance with specification for Bunker Fuel "C" in United States Government Department of Commerce, Bureau of Mines Technical Paper 323 B, except as to water and nonpetroleum sediment, and Fuel Oil 27 Plus shall be the seller's commercial grade having a gravity in degrees A.P.I. of not less than 27. [45]

Article IV.

Delivery

The said oil shall be delivered by the Seller on the orders of the Buyer to said vessels at the Standard Oil Company of California's plants at the waterfront, San Pedro and Richmond, California; Astoria and Willbridge (Portland), Oregon; Aberdeen and Point Wells, Washington; at Panama Canal Oil Crib, Balboa and Cristobal, Canal Zone, and/or by barge to vessels along the waterfront, San Pedro and/or San Francisco, California, in three thousand (3,000) barrel lots or less at option of Seller.

Article V.

Price

The price and/or prices which the buyer shall pay to the Seller in Gold Coin of the United States of America of its present weight and fineness or the equivalent in lawful money of the United States of America, for deliveries of oil hereunder shall be for each delivery hereunder:

For Fuel Oil at waterfront plants of Supplier:

San Pedro, California, Fifty-five cents (55¢) a barrel.

Richmond, California, Seventy cents (70¢) a barrel,

Astoria and Willbridge (Portland), Oregon, Eighty-five cents (85¢) a barrel.

Aberdeen and Point Wells, Washington, Eighty-five cents (85¢) a barrel.

Balboa and Cristobal, C. Z., Seller's current price at time of each delivery, but not to exceed One Dollar and five cents ($1.05) a barrel.

For Fuel Oil 27 Plus at waterfront plants of Suppliers:

San Pedro, California, Eighty-five cents (85¢) a barrel.

Richmond, California, Eighty-nine cents (89¢) a barrel.

Astoria and Willbridge (Portland), Oregon, One dollar and five cents ($1.05) a barrel.

Balboa and Cristobal, C. Z., Seller's current price at time of each delivery, but not to exceed One Dollar and sixty cents ($1.60) a barrel.

For Fuel Oil by barge:

Along waterfront, San Pedro, California, Fifty-five cents (55¢) a barrel.

Along waterfront, San Francisco, California, Seventy cents (70¢) a barrel.

For Fuel Oil 27 Plus by barge:

Along waterfront, San Pedro, California, Eighty-five cents (85¢) a barrel.

Along waterfront, San Francisco, California, Eighty-nine cents (89¢) a barrel. [46]

The first party agrees to give the second party the benefit of its posted market price ruling on the day of delivery for fuel oils, should it be lower than the price fixed herein.

Article VI.

Payment

The Buyer shall pay the Seller on or before the 10th of each calendar month for all deliveries made hereunder during the preceding calendar month. If at any time the Buyer shall fail to make any payment due hereunder or if the credit of the Buyer shall for any cause be deemed unsatisfactory by the Seller the Seller may, before making further deliveries, require the Buyer to pay for said oil with each order or may suspend deliveries hereunder until such payment has been made or may terminate this contract. No such suspension or termination shall affect the obligations of the Buyer hereunder and such failure to pay shall be deemed a breach of this entire contract.

Article VII.

Inspection and Acceptance

(a) The inspection of said oil for determination of quantity and quality shall be made in the presence of properly accredited representatives of the Buyer and of the Seller at time of each delivery. If properly accredited representatives of the Buyer are not present at such time of inspection then the

Seller's measurements and determinations of quantity and quality shall be deemed correct and no oil shall be rejected or claim as to quantity or quality allowed therefor after delivery thereof.

Sampling

(b) All samples of said oil for inspection purposes shall be taken at the time of delivery (if not arranged for otherwise) from the tank and/or barge from which delivery is made, in such manner as to secure a sample representative of the entire delivery.

Testing for Water and Non-Petroleum Sediment

(c) All determinations for water and non petroleum sediment contained in said oil shall be made in accordance with Method Number 300.31 United States Government Department of Commerce, Bureau of Mines Technical Paper 323B, pages 79-81.

Article VIII.

Measurement

(a) The measure of each delivery of said oil shall be made in the tank and/or barge from which the said oil is delivered, at the time of delivery. [47]

Correction for Temperature

(b) In determining the net volume of oil delivered hereunder adjustment in volume to 60° F. owing to difference in temperature shall be made in accordance with Abridged Volume Correction Table for Petroleum Oils, Supplement to Circular No. 154 of the U. S. Bureau of Standards, Issued October 8th, 1925.

Allowance for Water and Non-Petroleum Sediment

(c) All water and non-petroleum sediment contained in the said oil in excess of two per cent (2%), shall be deducted when determining the measure of each delivery providing claim therefor is made within ten (10) days after delivery thereof.

Article IX.

Charge or Tax

(a) Any tax imposed by any governmental authority upon the production, manufacture, storage, transportation or sale of the said goods delivered hereunder, or upon any vessel or pipe line used therein, shall be added to the prices herein stated and shall be paid for by the Buyer while the same is in effect.

Prevention of Performance

(b) The Seller shall not be obligated to deliver or the Buyer obligated to receive or use the said oil, when and while, and to the extent that the Buyer is prevented or hindered from receiving and using, or the Seller from manufacturing and making deliveries in its customary manner, by act of God, fire, strike, partial or total interruption or loss or shortage of transportation facilities, commandeering of raw materials, products, plants, or facilities, or by other similar or different acts of civil or military authorities, or by any cause beyond the control of the Seller or the Buyer, whether similar to the causes herein specified or not.

Article X.

Breach of Contract and Measure of Damages

(a) In the event of a breach of this contract by either the Seller or the Buyer, the measure of the estimated requirements of the said oil herein agreed to be used for the unexpired term of this contract shall be the average monthly use of oil during the months that oil was used for the purposes above stated, not exceeding twelve (12) months next preceding such termination, and the damages for such breach by either the Seller or the Buyer shall be the difference, if any, between the price herein fixed and the market price of the undelivered oil at the nearest market to the place of delivery and at the time of the breach; [48] if there be no such difference, the Seller's damages for such breach shall be the Seller's loss of profits on such undelivered oil. All claims for special consequential or other damages, different from those hereinabove set forth are hereby waived.

(b) The waiver of any breach of any provision hereof shall not be deemed to be a waiver of any other provision hereof or of any subsequent breach of such provision.

Article XI.

Governing Laws Contract Non-Assignable

(a) This contract and the interpretation hereof shall be governed by the laws of the State of California.

(b) This contract shall not be assignable by act of the Seller or Buyer, or by operation of law, and

shall not be deemed an asset in, and at the option of either party shall terminate in the event of, any voluntary or involuntary receivership, bankruptcy or insolvency proceedings.

(c) This instrument contains the entire contract. There are no oral promises, representations or warranties affecting it.

(d) Time is of the essence hereof.

In Witness Whereof, the parties hereto have executed this contract.

SIGNAL OIL AND GAS COMPANY

(Signed) S. B. MOSHER,
President.

(Signed) H. J. MARCH,
Secretary.

ANGLO CANADIAN SHIPPING COY. LTD.

(Signed) A. B. GRAHAM,
Director. [49]

EXHIBIT B

Los Angeles, Calif.
March 30, 1933.

Anglo Canadian Shipping Coy
425 Howe Street
Vancouver, B. C.

We have received long distance telephone from W. L. Comyn & Sons requesting we furnish five hundred sixty-five tons Twenty-four Plus Diesel Oil

for Steamship Nyhorn at San Pedro and including this shipment under your fuel oil contract with us Stop Will you please wire us authorization. Make this delivery and bill under your contract.

SIGNAL OIL & GAS COMPANY
811 West 7th St., Los Angeles. [50]

EXHIBIT C

1933 Apr 1 AM 3 02

PRA 9 24 NL—X Vancouver BC 31
Signal Oil & Gas Co
LosA

Referring your day letter as we are also interested Motorship Nyhorn we concur in delivery oil as requested by Messrs. W. L. Comyn and Sons.

ANGLO CANADIAN SHIPPING
CO. LTD. [51]

EXHIBIT 1

Invoice
Signal Oil and Gas Company
Petroleum and Its Products
General Offices
Signal Oil Building
Los Angeles, Calif.

MS Stjerneborg and Owners
c/o Anglo-Canadian Shipping Coy.
425 Howe Street,
Vancouver, B. C.

Invoice No. F-728
Invoice Date May 19, 1933
Vender's No. 95705
Date Shipped
Shipped to MS Stjerneborg & Owners
Destination San Pedro, Calif.
Shipped Via Barge #7
Shipped from El Segundo, Calif.
Prepaid or Collect
Customer's Order No.
F. O. B.

Car No.—
Ticket No. 7217.
Com.—Fuel Oil 27 Plus.
Gross Bbls.—2,637.54.
Grav.—
Temp.—65.
Corr. Factor—.9980.
Net Ship't.
Bbls.—2,632.26.
Price—.85.
Amt.—$2,237.42. [52]

EXHIBIT 2

Invoice
Signal Oil and Gas Company
Petroleum and Its Products
General Offices
Signal Oil Building
Los Angeles, Calif.

MS Stjerneborg and Owners
c/o Anglo-Canadian Shipping Coy.
425 Howe Street,
Vancouver, B. C.

Invoice No. F-727
Invoice Date May 19, 1933
Vendor's No. 95711
Date Shipped May 17, 1933
Shipped to MS Stjerneborg & Owners
Destination San Pedro, Calif.
Shipped Via Pipe Line
Shipped from El Segundo, Calif.
Prepaid or Collect
Customer's Order No.
F. O. B.

Ticket No.—
Com.—Fuel Oil.
Gross Bbls.—2,151.88.
Grav.—
Temp.—66.
Corr. Factor—.9976.

Net Ship't.
Gal.—
Bbls.—2,146.72.
Price—.85.
Amt.—$1,824.71. [53]

EXHIBIT 3

Copy

Airmail.

June 27, 1933.

W. L. Comyn & Sons,
427 Colman Building,
Seattle, Washington.

We are enclosing herewith copies of the following invoices, covering fuel oil deliveries to the S.S. "Stjerneborg":

#727, May 17, 1933—	$1,824.71
#728, " 16, 1933—	2,237.42
Total	$4,062.13

May we kindly have your remittance to cover these invoices inasmuch as payment became due on June 10, 1933.

Thanking you, we are

Very truly yours,
SIGNAL OIL AND GAS COMPANY
By .....

C
Encl.. [54]

EXHIBIT D

Signal Oil and Gas Company
New Address
811 West Seventh Street
Los Angeles

May 19th, 1933

Anglo-Canadian Shipping Coy. Ltd. of Canada,
425 Howe St.,
Vancouver, B. C.

Gentlemen:

With reference to the contract between this company and yourselves, dated September 26th, 1932, covering the purchase and sale of Fuel Oil and Fuel Oil 27 plus for delivery beginning October 1, 1932, and ending December 31st, 1933, and thereafter until terminated by 180 days' written notice from either party to the other.

It is hereby understood and agreed that said 180 day notice will not be given by either of us prior to July 1, 1934.

The contract is further modified to include the fuel oil requirements of any and all vessels owned, chartered, and/or operated by Dominion Commonwealth Line and/or Cascade Line, and/or W. L. Comyn & Sons. The contract quantity shall be increased up to but not exceeding 500,000 barrels.

Articles IV and V of the contract, with regard to delivery points and price, shall be and the same are hereby amended to include deliveries at dock Honolulu, T. H., at a price of $1.05 a barrel for Fuel Oil and $2.02 a barrel for Fuel Oil 27 plus.

Said contract as above modified, and all of the terms and provisions thereof, is hereby ratified and confirmed.

Your signature below shall indicate your agreement to the foregoing.

Very truly yours,

SIGNAL OIL & GAS COMPANY
(Signed) S. B. MOSHER,
President.

ANGLO CANADIAN SHIPPING COY. LTD., of Canada
(Signed) A. B. GRAHAM. [55]

EXHIBIT E

May 19, 1933

Anglo-Canadian Shipping Coy., Ltd. of Canada,
425 Howe Street,
Vancouver, B. C.

Gentlemen:

Enclosed herewith are three copies of a Letter Contract, modifying our Fuel Oil Contract with you, which was made September 26, 1932. The accompanying modification increases the quantity of fuel oil up to but not exceeding 500,000 barrels. If this amount is not satisfactory, kindly change the same and initial.

Kindly sign and return two copies for our files.

Very truly yours,

SIGNAL OIL & GAS COMPANY

By S. B. MOSHER,

President.

SBM:TFC

Enc. [56]

EXHIBIT F

May 31st, 1933.

The Signal Oil and Gas Company,
811 West 7th Street,
Los Angeles, California.

Dear Sirs:

Attention Mr. S. B. Mosher

Wish to thank you for your kind letter of the 19th inst. enclosing three copies of "Letter Contract" modifying our fuel oil contract as of September 26th, 1932.

As requested we have signed and are returning herewith two copies for your files.

It is our understanding that you will, of course, bill Messrs. W. L. Comyn & Sons direct for the quantity which may be used for his Cascade Line and/or his own service. You will bill us for that oil which is ordered through the name of the Dominion

Commonwealth Line and the Anglo Canadian Shipping Coy. Ltd.

Yours very truly,
ANGLO CANADIAN SHIPPING COY. LTD.,
By A. B. G.

ABG BB

CC Mr. W. L. Comyn.

Herewith copy of original contract as of Sept 26th, 1932, with amendment as referred to above.

ABG [57]

EXHIBIT G

Signal Oil and Gas Company
General Offices, Signal Oil Building
811 West Seventh Street
Los Angeles

July 25, 1933

Anglo-Canadian Shipping Co., Ltd.
425 Howe Street,
Vancouver, B. C.

Attention: Mr. A. B. Graham.

Gentlemen:

We have been requested by Mr. Moore of W. L. Comyn & Sons to advise him whether we are in position to make deliveries of 27 Plus Diesel Oil at the following locations.

Bellingham,
Aberdeen,
Point Wells,
Tacoma,
Seattle.

These points are not included under our contract dated September 26, 1932.

In the meantime, by telegraphic correspondence, we have made a delivery to your SS "Nyhorn" of 27 plus Diesel Oil at Point Wells.

On investigation we find that our facilities are such that it would be impossible for us to furnish you with 27 plus Diesel Oil at Seattle, Tacoma, or Bellingham.

At Aberdeen our facilities are limited but we would be able to supply you, provided that we were given two weeks' notice in advance of the time that delivery is required.

We would be able to make deliveries at Point Wells at any time.

Due to particular handling costs at these latter two points, it would be necessary for us to charge you $1.15 per barrel for all deliveries of 27 plus Diesel Oil made at Aberdeen or Point Wells. We would be willing to include delivery of 27 plus at these points at $1.15 per barrel for the balance of our contract.

Our original telegram quoting price of $1.05 for the recent shipment to the SS "Nyhorn" was made in error during the writer's absence, and our billing will be forwarded to you on that basis.

If you desire that we prepare and send you a rider including these points under the contract will you so advise?

Very truly yours,
SIGNAL OIL AND GAS COMPANY
By R. H. GREEN

CC-
W. L. Comyn & Sons,
Coleman Building,
Seattle, Washington.
Attention: Mr. Moore.
RHG:TC [58]

EXHIBIT H

TABULATION OF NAMES OF VESSELS, DATES OF OIL DELIVERIES, DATES OF INVOICES, AND DATES OF PAYMENT

Vessel	Date Delivered	Date Invoiced	Date Paid
Nyhorn	June 6, 1933	June 12, 1933	July 31, 1933
"	July 22, 1933	July 28, 1933	Sept. 14, 1933
"	Sept. 22, 1933	Sept. 26, 1933	Nov. 9, 1933
John Bakke	Oct. 8, 1933	Oct. 8, 1933	Oct. 23, 1933
Samuel Bakke	Nov. 4, 1933	Nov. 4, 1933	Dec. 8, 1933
Nordhval	Nov. 14, 1933	Nov. 14, 1933	Jan. 22, 1934
Hoegh Trader	Nov. 20, 1933	Nov. 20, 1933	Dec. 26, 1933
Tigre	Dec. 12, 1933	Dec. 12, 1933	Jan. 30, 1934
"	Dec. 15, 1933	Dec. 15, 1933	Jan. 30, 1934
John Bakke	Dec. 20, 1933	Dec. 20, 1933	Feb. 9, 1934
John Bakke	Jan. 12, 1934	Jan. 12, 1934	Feb. 9, 1934
Zaanland	Jan. 21, 1934	Jan. 21, 1934	Mar. 9, 1934
Nordpol	Jan. 24, 1934	Jan. 24, 1934	Mar. 3, 1934
Zaanland	Jan. 27, 1934	Jan. 27, 1934	Mar. 9, 1934
Amstelland	Feb. 2, 1934	Feb. 2, 1934	Apr. 2, 1934
"	Feb. 7, 1934	Feb. 2, 1934	Apr. 2, 1934
"	Feb. 14, 1934	Feb. 14, 1934	Apr. 2, 1934
Nyhorn	Feb. 17, 1934	Feb. 17, 1934	Apr. 27, 1934

Vessel	Date Delivered	Date Invoiced	Date Paid
Amstelland	Feb. 26, 1934	Mar. 1, 1934	Apr. 2, 1934
Stjerneborg	Mar. 14, 1934	Mar. 14, 1934	May 3, 1934
Nordhval	Mar. 26, 1934	Mar. 26, 1934	May 10, 1934
"	Apr. 18, 1934	Apr. 18, 1934	Unpaid*
Brand	Apr. 26, 1934	Apr. 26, 1934	Unpaid
Sunnavik	May 7, 1934	May 7, 1934	Unpaid**
Brand	May 11, 1934	May 11, 1934	Unpaid
Stjerneborg	May 15, 1934	May 15, 1934	Unpaid
Samuel Bakke	May 31, 1934	May 31, 1934	Sept. 5, 1934

[59]

Nordpol	June 2, 1934	June 2, 1934	Aug. 14, 1934
Belpamela	June 11, 1934	June 11, 1934	Aug. 17, 1934

(Subsequent deliveries between June 25, 1934, and February 19, 1935, made on a cash basis.)

*Libeled at California, spring 1938

**Libeled at British Columbia, summer 1935

[60]

EXHIBIT I

W. L. Comyn & Sons
Freight Contractors
General Commission Merchants
Steamship Agents and Brokers
427 Colman Bldg.
Seattle, Wash.

July 28, 1933

Messrs. Signal Oil Company
Signal Oil Building
Los Angeles, California

Dear Sirs:

Enclosed, herewith, please find check in the sum of $3895.24, covering oil supplied for our account to the M.S. "Nyhorn".

We are enclosing you, herewith, copy of our telegram to Mr. Hartline under date of June 27th and we would ask, if it is possible, that you bill us directly for oil supplied for our account to vessels of our fleet or, in other words, bill us and not the Anglo Canadian Shipping Coy. Ltd. if it is possible for you so to do.

Yours very truly,
W. L. COMYN & SONS
By W. LESLIE COMYN,
President.

WLC:M
Encl. [61]

EXHIBIT J

Signal Oil and Gas Company
General Offices, Signal Oil Building
811 West Seventh Street
Los Angeles

October 5, 1933

Anglo-Canadian Shipping Co., Ltd. of Canada
425 Howe Street
Vancouver, B. C.

Gentlemen:

The Code of Fair Competition for the Petroleum Industry operative under the National Industrial Recovery Act and signed by President Franklin D. Roosevelt August 19, 1933, and as amended September 13, 1933, has been accepted and subscribed to by us and since September 2, we have been restricted in our business dealings thereby.

We are thoroughly in accord with the National

Recovery program and intend to adhere to the letter and spirit of the Code which compels us to handle some of our business affairs somewhat differently than we have in the past. We are assured that you also desire to cooperate one hundred per cent and the purpose of this letter is to acquaint you with the rules laid down in the Code covering the extension of credit.

The code provides that the maximum of credit shall be a maximum of credit "for fuel oil sales in tank car or barge shipments, or deliveries to ships' bunkers, to be net 30 days from date of shipment." This does not affect the establishment of shorter terms. The Code further states that "the granting of any longer term of credit by any refiner than that allowed by this schedule shall constitute an unfair method of competition."

Simply stated, it means that all accounts, unless shorter term of credit is in effect, must be paid in full on or before thirty days, or we will not be permitted to make any further credit sales until the account is paid.

We ask your support and cooperation so that we, collectively, shall do our part in aid of the National Recovery Program.

Very truly yours,

SIGNAL OIL AND GAS COMPANY

By .....

RHG MEM Vice-President.

CC—W. L. Comyn & Sons

c/o Anglo-Canadian Co., Ltd. of Canada

427 Comyn Bldg., Seattle, Washington. [62]

EXHIBIT K

W. L. Comyn & Sons
Freight Contractors
General Commission Merchants
Steamship Agents and Brokers
427 Colman Bldg.
Seattle, Wash.

December 14th, 1933

Messrs. Signal Oil and Gas Company,
Signal Oil Bldg.,
San Francisco, Calif.

Dear Sirs:

We are now in receipt of your account against M.S. "Hoegh Trader", which has been forwarded to Vancouver in care of the Anglo Canadian Shipping Co., Limited.

We would be much obliged if you would adjust your records so that, in the future, all of your accounts against ships operated by ourselves will come forward to this office and not to the Anglo Canadian Shipping Co., Limited, at Vancouver.

Yours very truly,
W. L. COMYN & SONS
By R. A. KENDALL

RAK:MW [63]

EXHIBIT L

Signal Oil and Gas Company
General Offices, Signal Oil Building
811 West Seventh Street
Los Angeles.

January 4, 1934

W. L. Comyn and Sons,
427 Colman Building,
Seattle, Washington.

Gentlemen:

Our billing department has had some difficulty in determining which invoices should be made out to your company and which should be made out to Anglo-Canadian Shipping Company.

We have now made arrangements with our order department whereby this difficulty will be eliminated in the future; however, in checking unpaid items we have found several invoices to Anglo-Canadian which should have been sent to you.

These invoices are enclosed herewith together with duplicates of the receipts. Please destroy any invoices which may be forwarded by Anglo-Canadian as all unpaid deliveries are covered by these invoices.

We ask that you send your remittance for the two November deliveries as soon as possible to avoid any possible delay in future shipments.

Very truly yours,
SIGNAL OIL AND GAS COMPANY
By J. H. ROUNSAVELL.
Comptroller. [64]

EXHIBIT M

Signal Oil and Gas Company
General Offices, Signal Oil Building
811 West Seventh Street
Los Angeles

January 18, 1934

W. L. Comyn and Sons,
427 Colman Building,
Seattle, Wash.

Gentlemen:

Please refer to our letter of January 4 with reference to our invoices misdirected to Anglo-Canadian Shipping Company.

We have received payment for deliveries to MS Nordkap and MS Nordbo from Girdwood Shipping Company on December 4 and 5, respectively, but have not received payments for any other deliveries.

The management is particularly anxious to receive your check for the November items and request that you deliver your check to us as soon as possible to enable us to comply with the code governing the petroleum industry which prohibits sales to an account over thirty days past due.

Very truly yours,
SIGNAL OIL AND GAS COMPANY
By J. H. ROUNSAVELL,
Comptroller. [65]

EXHIBIT N

Mackay Radio

RADIOGRAM

1/20/34

W. L. Comyn and Sons,
427 Colman Building,
Seattle, Wash.

Understand you are requesting delivery of fuel oil at Seattle tonight. Stop. Please advise when we may expect payment for delinquent November items. Stop. Wire reply.

SIGNAL OIL AND GAS COMPANY. [66]

EXHIBIT O

S 23 24 DL 1 Extra Rush

Seattle Wash 1/20/34 1257 PM

Signal Oil and Gas Company

Now requesting delivery only 250 ton fuel oil Portland for Steamer Zaanland not at Seattle Stop Nordhval only November item forty-eight thirty-eight eighty-eight. Have mailed you check today Stop Only just receiving remittance our freight on tlfis vessel from Europe otherwise would have mailed you check previously Stop You may expect check for oil supplied Tigre at San Francisco and at San Pedro December fifteenth next week as vessel now arrived and discharging and freight will be in next week.

W. L. COMYN & SONS. [67]

EXHIBIT P

W. L. Comyn & Sons
Freight Contractors
General Commission Merchants
Steamship Agents and Brokers
427 Colman Bldg.
Seattle, Wash.

January 22, 1934.

Airmail
Messrs. Signal Oil & Gas Company
Signal Oil Building
Los Angeles, California

Dear Sirs:

The writer has been absent from the office during the past three weeks owing to illness and only returned to the office today.

We have your letter of the 18th, and, on referring to your letter of the 4th, find you sent u. bills for the "Nordhval" delivery, which is a November delivery, and for the "Tigre", which is a December delivery.

In looking into your letter of the 4th, we find that November delivery to the "Hoegh Trader" was paid by us under date of December 26th and we hold your receipt therefor in the sum of $3524.38.

"Nordhval" November Item: Check was sent you on Saturday for $4838.88. This takes care of all November deliveries made by your good selves.

December delivery is "Tigre" in two amounts—one at San Francisco amounting to $1909.62 and the other at San Pedro amounting to $2890.79, and,

as wired you on Saturday, we shall be remitting you for this December delivery some time during the present week, the "Tigre" having arrived on the other side and we are just beginning to receive our freight money by cable from her.

This will leave outstanding January delivery for "John Bakke" only, for which you will receive check within thirty days from date of delivery.

Yours very truly,
W. L. COMYN & SONS
By W. LESLIE COMYN,
President. [68]

EXHIBIT Q

Signal Oil and Gas Company
General Offices, Signal Oil Building
811 West Seventh Street
Los Angeles

January 23, 1934.

W. L. Comyn & Sons,
427 Colman Building,
Seattle, Washington.

Gentlemen:

This will acknowledge receipt of your letter of January 18th requesting a delivery of 800 tons of Diesel Oil to the M.S. "Nordpol" at San Pedro on January 23rd; also, your message via teletype-writer requesting delivery to the "Zaanland" on the 25th or 26th. Arrangements have been made to take care of these vessels as requested.

Please refer to your request for fuel oil for the S.S. "Zaanland" at Seattle, later changed to Portland. Considerable confusion arose in connection with this request because this office was not notified of your needs. It will aid us materially in serving you promptly if your requests for deliveries under our contract are addressed direct to the Signal Oil and Gas Company at Los Angeles.

With reference to exchange of telegraphic correspondence pertaining to the November items appearing upon your account for deliveries incidental to the contract of the Anglo Canadian Shipping Corporation, Ltd.

It is our understanding when you last visited San Francisco definite arrangement was reached that notwithstanding delayed receipts of freight moneys, you would, through your Seattle banking connection, arrange for funds to pay for the bunker fuels within thirty days of each delivery, in order that we might comply with the Code of Fair Competition for the Oil Industry, which prescribes a maximum term on bunker fuels of thirty days from the actual delivery.

In keeping with this arrangement, it is necessary that December 12, 15 and 20th items be cleared at once in order that we may be in position to serve vessels calling at delivery points for supplies.

We would be pleased to have your acknowledgment of the understanding above referred to and

also an intimation that we may expect to receive settlement in accordance therewith.

Yours very truly,
SIGNAL OIL AND GAS COMPANY
By RAY W. METCALF
Manager Order & Distribution Dept.

RWM:GR
cc-
R. H. Green
R. W. Metcalf
General. [69]

EXHIBIT R

Seattle, Washington
February 6, 1934

Signal Oil & Gas Company
Signal Oil Building
Los Angeles, California

Mailed you today checks $5164.10 and $2360.34 covering oil supplied John Bakke Stop Kindly instruct your Portland plant supply one hundred tons fuel oil there for Amstelland tomorrow and be advised she will complete bunkering with you at San Pedro with fuel oil not Diesel about thirteen hundred tons about February tenth or eleventh.

W. L. COMYN & SONS

Day letter
Chg Senders
WLC:M
Amstelland. [70]

EXHIBIT S

W. L. Comyn & Sons
427 Colman Bldg.

Seattle, Wash.
Feb. 7, 1934

Messrs. Signal Oil and Gas Co.,
Signal Oil Bldg.,
811 West 7th St.,
Los Angeles, California.

Dear Sirs:

We have your letter of January 23rd, contents of which are carefully noted and we shall, hereafter, keep you advised directly of our bunker requirements as promptly as we can do so. This will get over the Anglo Canadian Shipping Coy. Limited.

We have now cleared all items with you with the exception of the "Nordpol" and "Zaanland", both of which we expect to clear well prior to due dates with you.

In regard to your understanding with reference to our bank connections being willing to advance us further funds to pay your bills prior to collection of the freight on the other side, while they are willing to do this, at the same time it is going to cut down our operating credit with them and we are, therefore, desirous of discussing this matter with your people in San Francisco next week, at which time the writer expects to be there, before definitely confirming the arrangement with you.

As you know, we have been at all times prepared to secure your accounts by the assignment to you, if necessary, of collect freight through our bankers. We understand that you cannot give us the 60 days credit we were previously getting from the Texas Company without some special arrangement being made that will in some way conform to your Code and we are going to endeavor to find a way that will be satisfactory to you and that will not, in any way, cut down our operating credit with our bankers.

It really is not a very serious matter as, on practically all our vessels, we receive our funds on collect freight within 45 days after the vessels leave your port for the other side of our European service.

Yours very truly,
W. L. COMYN & SONS,
By "W. L. COMYN",
President.

Copy
TC [71]

EXHIBIT T

Copy.

February 9, 1934

W. L. Comyn & Sons,
Colman Building,
Seattle, Washington.

Gentlemen:

This will acknowledge receipt of your telegraphic order for fuel oil to be delivered to the "Amstel-

land" at Portland and San Pedro. Arrangements have been made to take care of the deliveries as requested.

This will also acknowledge receipt of your remittance in the amount of $2,360.34 and $5,164.10 in payment of our invoices, which have been receipted and are returned herewith.

Yours very truly,
SIGNAL OIL AND GAS COMPANY
By RAY W. METCALF,
Manager—Order & Distribution Department.

RWM:GR
Enc.
cc-
R. H. Green
R. W. Metcalf
Jerry Krause. [72]

EXHIBIT U

Copy

Signal Oil and Gas Company
General Offices, Signal Oil Building
811 West Seventh Street
Los Angeles

W. L. Comyn and Sons, March 20, 1934
427 Colman Bldg.,
Seattle, Washington.

Gentlemen:

We wish to call your attention to the fact that we have not received your remittance for February de-

liveries of fuel oil and would appreciate your advice in this matter.

We would especially like to receive your check for deliveries to S.S. "Amstelland" February 2nd and 7th at this time, and would like to have your check for all February items by April 1.

Yours very truly,
SIGNAL OIL AND GAS COMPANY
By J. H. ROUNSAVELL,
Asst. Secretary. [73]

EXHIBIT V

W. L. Comyn & Sons
Freight Contractors
General Commission Merchants
Steamship Agents and Brokers
427 Colman Bldg.
Seattle, Wash.

March 24, 1934

Messrs. Signal Oil & Gas Company
Signal Oil Building
Los Angeles, California

Dear Sirs:

We have your letter of the 20th, and in reply thereto, would say we shall remit you for all February items prior to April 1st.

For your information, the "Amstelland" is now discharging and we expect to receive the balance of

her freight not later than March 28th or 29th and prompt remittance will be made to you.

Yours very truly,
W. L. COMYN & SONS
By W. LESLIE COMYN,
President by M.

WLC:M [74]

EXHIBIT W

March 30, 1934

Messrs. Signal Oil & Gas Company
Signal Oil Building
Los Angeles, California
Dear Sirs:

Enclosed, herewith, please find check in the amount of $10,918.63 covering your February accounts.

Yours very truly,
W. L. COMYN & SONS
By
President.

WLC:M
encl.

(It is stipulated in explanation of the foregoing Ex. W that check in the sum of $10,918.63 covered the purchase price of oil supplied to the vessel Amstelland on four different dates.) [75]

EXHIBIT X

April 10th, 1934

Messrs. Signal Oil & Gas Company,
Signal Oil Bldg.,
Los Angeles, Calif.

Dear Sirs:

M.S. "Nordhval"

We are in receipt of invoice billed by you to Messrs. Anglo Canadian Shipping Co., copy of which is attached.

Please be advised that this account should be billed to W. L. Comyn & Sons and not to the Anglo Canadian Shipping Co., Ltd. We would be much obliged if you would amend your records accordingly, advising us that you have done so.

Yours very truly,
W. L. COMYN & SONS
By

RAK:MW
enc. [76]

EXHIBIT Y

Signal Oil and Gas Company
General Offices, Signal Oil Building
811 West Seventh Street
Los Angeles

April 20, 1934

W. L. Comyn and Sons,
427 Colman Bldg.;
Seattle, Washington.

Gentlemen.

Our records show an unpaid item on your account in the amount of $1,615.81 for fuel delivery to your "Nyhorn" at San Pedro on February 17th. Will you please check this item and, if payment has not been made, mail your remittance to us at once?

We have your letter of April 10th regarding invoice on delivery to M.S. "Nordhval" and have charged this invoice to your account instead of to Anglo-Canadian Shipping Co., Ltd. Our billing department has instructions to keep your account separate and it is unlikely that a similar error will be made in the future.

Very truly yours.
SIGNAL OIL AND GAS COMPANY
By G. F. KRAUSE. [77]

EXHIBIT Z'

April 24th, 1934

Messrs. Signal Oil & Gas Company
Signal Oil Building
Los Angeles, Calif.

Dear Sirs:

We have your favor of April 20th and in return enclose herewith check for $1615.81 for fuel delivered to M.S. "Nyhorn".

We had scheduled this account for payment at the same time that the later delivery was to be paid. However, we are pleased to enclose our check as noted.

Please be advised that checks will be mailed covering March accounts in the next few days.

We also note that you have amended the billing of the oil delivered to M.S. "Nordhval" from the Anglo Canadian Shipping Co., Ltd. to our account.

Yours very truly,
W. L. COMYN & SONS
By

RAK:MW
encl. [78]

EXHIBIT A-1

April 30, 1934

Messrs. Signal Oil & Gas Company
Signal Oil Building
Los Angeles, California

Dear Sirs:

Enclosed, herewith, please find check #5186 in the sum of $5121.91 to cover your invoice F-1619 and our check #5187 in the sum of $3610.09 to cover your invoice F-1640.

This covers payment of all your March items.

Yours very truly,
W. L. COMYN & SONS
By
President.

WLC:M
encl.

(It is stipulated in explanation of the foregoing Ex. A-1 that check in the sum of $5121.91 covered the purchase price of oil supplied to the MS "Nyhorn", and check in the sum of $3610.09 covered the purchase price of oil supplied to the MS "Stjerneborg".) [79]

EXHIBIT B-1

Jan. 2, 1934.

Messrs. Signal Oil & Gas Company
Signal Oil Building
Los Angeles, California.

Dear Sir:

The motorship "John Bakke" will be in Los Angeles about January 10th on her way Home and

we hereby request that you please supply 850 tons of diesel oil to her of the same grade as you supplied to her her northbound, namely 24 plus.

If you will keep in touch with Messrs. Swayne & Hoyt, who will be acting as vessel's agents at Los Angeles, they will keep you advised as to the time and place they will require bunkers to be supplied.

Yours very truly,
W. L. COMYN & SONS
By Secretary

JGC:M
c/c—Messrs. Swayne & Hoyt, Ltd.
Chamber of Commerce Building
Los Angeles, California [80]

EXHIBIT C-1

W. L. Comyn & Sons
427 Colman Bldg.
Seattle, Wash.

January 18, 1934.

Signal Oil Company
Signal Oil Building
Los Angeles, California

Dear Sirs:

The M/S "Nordpol" is due in San Pedro about January 23d, and as this vessel is at present on our charter, we would appreciate if you would supply to her 800 tons of Diesel Oil. If you will keep in touch with Messrs. Howard Hartry they will be able

to advise you the exact time and place they require the oil to be supplied to the vessel.

Yours very truly,

W. L. COMYN & SONS

By J. G. COMYN

JGC:L [81]

EXHIBIT D-1

January 22, 1934.

Messrs. Signal Oil & Gas Co.,
Signal Oil Building
Los Angeles, California

Dear Sirs:

The S/S "Zaanland" which is now on our Time Charter is due in Los Angeles January 26th, and we hereby request that you please supply to this vessel between 1500 and 1600 tons of Fuel Oil .95, specific gravity at 15° C.

Messrs. Swayne & Hoyt will be the agents for the vessel and if you will keep in touch with them they will advise as to the time and place they would like to have delivery.

Yours very truly,

W. L. COMYN & SONS

By

JGC:L [82]

EXHIBIT E-1

Seattle, Washington
February 6, 1934

Signal Oil & Gas Company
Signal Oil Building
Los Angeles California

Mailed You Today Checks $5164.10 and $2360.34 Covering Oil Supplied John Bakke Stop Kindly Instruct Your Portland Plant Supply One Hundred Tons Fuel Oil There for Amstelland Tomorrow and Be Advised She Will Complete Bunkering With You at San Pedro With Fuel Oil Not Diesel About Thirteen Hundred Tons About February Tenth or Eleventh.

W. L. COMYN & SONS

Day letter
Chg Senders
WLC:M
Amstelland [83]

EXHIBIT F-1

February 8, 1934

Messrs. Signal Oil & Gas Co.,
Signal Oil Building
Los Angeles, California

Dear Sirs:

The S/S "Amstelland" now on our charter is due in San Pedro for bunkers Tuesday AM—February the 13th, and we hereby request that you please sup-

ply about 1300 tons of Fuel Oil by barge to the above vessel.

Mr. Howard Hartry, 625 Beacon Street, San Pedro, will be agent for the vessel and if you will keep in touch with him, he will advise the exact time the vessel will require the barge to be alongside.

Will you please supply the oil at an approximate grade of .95, specific gravity at 15° C.

Yours very truly,

W. L. COMYN & SONS

By

Secretary

JGC:L

CC—Mr. Howard Hartry
625 Beacon St.
San Pedro, California. [84]

EXHIBIT G-1

Signal Oil and Gas Company
811 West Seventh Street
Los Angeles

February 9, 1934

W. L. Comyn & Sons,
Colman Building,
Seattle, Washington.

Gentlemen:

This will acknowledge receipt of your telegraphic order for fuel oil to be delivered to the "Amstel-

land" at Portland and San Pedro. Arrangements have been made to take care of the deliveries as requested.

This will also acknowledge receipt of your remittance in the amount of $2,360.34 and $5,164.10 in payment of our invoices, which have been receipted and are returned herewith.

Yours very truly,
SIGNAL OIL AND GAS COMPANY
By RAY W. METCALF
Manager—Order & Distribution Department.

RWM:GR
Enc. [85]

EXHIBIT H-1

Seattle, Washington
Feb. 14, 1934

Signal Oil and Gas Company
Signal Oil Building
Los Angeles California

Nyhorn Due San Pedro Midnight Friday Please Supply Two Hundred Fifty Tons Dieseloil.

W. L. COMYN & SONS

Straight Wire
Chg Senders
JGC:M
Nyhorn 5 [86]

EXHIBIT I-1

February 14, 1934

Air Mail
Messrs. Signal Oil & Gas Co.,
Signal Oil Building
Los Angeles, California
Dear Sirs:

M/S "Nyhorn".

We beg to confirm our today's telegram requesting you to supply bunkers for the above vessel.

We received a Radio from her this morning and as she has not enough bunkers aboard to bring her to Vancouver, she has to stop at San Pedro—northbound.. We telegraphed you in order that you would have sufficient notice to prepare for her.

We hereby request that you please supply 250 tons of diesel oil by barge to the vessel upon her arrival at San Pedro.

The Captain advised in his Radio that he would arrive in San Pedro, midnight—Friday, February 16th. Mr. Howard Hartry will be looking after the vessel and no doubt he will be in touch with you as to the exact time the oil barge will be required.

Yours very truly,
W. L. COMYN & SONS
By

Secretary

JGC:L [87]

EXHIBIT J-1

February 26, 1934.

Messrs. Signal Oil & Gas Company
Signal Oil Building
Los Angeles, California

Dear Sirs:

M/S "Nyhorn"

The M/S "Nyhorn" is expected to arrive in Los Angeles Wednesday, March the 7th, and we hereby request that you supply to the above vessel 725 tons of diesel oil—same quality and grade as you supplied for this vessel northbound.

Messrs. Swayne & Hoyt will be Agents for the vessel and they will advise you as to the place and time they will require oil barge brought alongside.

Yours very truly,
W. L. COMYN & SONS
By

Secretary

JGC:L [88]

EXHIBIT K-1

March 6, 1934.

Messrs. Signal Oil & Gas Company
Signal Oil Building
Los Angeles, California

Dear Sirs:

The M/S "Stjerneborg" now on our charter is loading at Portland, Oregon for China and we re-

quire for this vessel, 450 tons of diesel oil under our contract with you. It will be necessary that this oil be supplied at Portland as the vessel is not coming to San Pedro and we would greatly appreciate your advising your agents at Portland to supply approximately 450 tons about March the 12th. We are requesting your Portland agents to supply 450 tons of bunkers for this vessel and would appreciate your confirming that this purchase is entirely in order.

Thanking you very much, we beg to remain

Yours very truly,

W. L. COMYN & SONS

By

Secretary

JGC:L [89]

EXHIBIT L-1

March 19, 1934.

Messrs. Signal Oil & Gas Company
Signal Oil Building
Los Angeles, California

Dear Sirs:

M. S. "Nordhval"

We have received radio advice from this vessel that she is due in Los Angeles on March 25th

She is on her way northbound to load a cargo for Europe under our charter and she will require 150 tons of Diesel oil which please supply under our contract with you.

Mr. Howard Hartry, 625 Beacon Street, San Pedro, will be acting as Agent for the vessel and, if you will keep in touch with him, he will be able to advise you as to just what time oil barge will be required.

Yours very truly,
W. L. COMYN & SONS
By

Secretary

JGC:M
C/C—Mr. Howard Hartry
625 Beacon Street
San Pedro, California. [90]

EXHIBIT M-1

Signal Oil and Gas Company
General Offices 727 West Seventh Street
New Address
811 West Seventh Street
Los Angeles

March 22, 1934

W. L. Comyn & Sons,
427 Colman Building,
Seattle, Washington

Gentlemen:

This will acknowledge receipt of your letter of March 19, 1934 advising that the M. S. "Nordhval" will be in Los Angeles on March 25th and will require 150 tons of Diesel oil.

Arrangements have been made to supply this steamer with the required amount of oil.

Yours very truly,

SIGNAL OIL AND GAS COMPANY

By RAY W. METCALF

Order & Distribution Dept.

GR [91]

EXHIBIT N-1

May 1, 1934

Messrs. Signal Oil & Gas Company
Signal Oil Building
Los Angeles, California

Dear Sirs:

M/S "Brand"

The M/S "Brand" is due in Los Angeles about May 9th and we hereby request that you please supply 625 tons of Diesel Oil to the above vessel.

Messrs. Swayne & Hoyt Ltd. will be acting as Agents and if you will keep in touch with them they will be able to advise as to the time and place they will require the oil barge to be put along side.

Thanking you for your attention in this matter, we beg to remain,

Yours very truly,

W. L. COMYN & SONS

JGC:L [92]

By

Secretary.

EXHIBIT O-1

May 1, 1934

Messrs. Signal Oil & Gas Company
Signal Oil Building
Los Angeles, California

Dear Sirs:

M/S "Stjerneborg"

The M/S "Stjerneborg" which is at present on our time charter will be loading a cargo of lumber to China and Japan about the middle of May at Grays Harbor. In our Oil Contract with you there is no price stipulated for bunkers at Aberdeen, although the Standard Oil Company have an Oil Dock at this port.

As near as we can calculate at the present time, the vessel will probably need in the neighborhood of from 400 to 500 tons of Diesel Oil, and under our present contract with you the price of Diesel Oil at either Willbridge, Oregon or Point Wells, Washington, is $1.05 a barrel and we presume that the same rate will apply to Aberdeen as applies to Willbridge and Point Wells.

Please advise shortly that it will be in order to bunker the Stjerneborg at Aberdeen.

Yours very truly,
W. L. COMYN & SONS
By

Secretary

JGC:L [93]

EXHIBIT P-1

Seattle Washington
May 5, 1934

Signal Oil & Gas Company
Signal Oil Building
Los Angeles California

Have Just Chartered Sunnanvik Due Los Angeles Monday Morning Will Require Bunkers at That Time Will Advise Quantity Later Today

W. L. COMYN & SONS

Rush Wire
C G Senders
JGC:M
Sunnanvik [94]

EXHIBIT Q-1

May 21, 1934

Messrs. Signal Oil & Gas Company
Signal Oil Building
Los Angeles
California

Dear Sirs:

The M/S "Nordpol" is due in San Pedro about May the 30th and we hereby request that you please supply about 200 tons of Diesel Oil under our Contract with you.

The Agent for the vessel will be Mr. Howard Hartry, 625 Beacon Street, San Pedro, California,

and we will have him keep you advised as to the time the vessel is due.

Yours very truly,
W. L. COMYN & SONS
By

Secretary

JGC:L
cc—Mr. Howard Hartry
625 Beacon Street
San Pedro, California. [95]

EXHIBIT R-1

May 29, 1934

Messrs. Signal Oil & Gas Company,
Signal Oil Building,
Los Angeles, California.

Dear Sirs:

We beg to confirm telegram sent you today requesting 100 tons of Diesel Oil to be supplied to the "Samuel Bakke".

This vessel is due tomorrow evening at 5:00 PM. but she has cargo on board to discharge at Long Beach and no doubt Messrs. Swayne & Hoyt Ltd. will require the oil barge to be put alongside while she is discharging her cargo there.

Yours very truly,
W. L. COMYN & SONS
By

Secretary

JGC:L [96]

EXHIBIT S-1

June 5, 1934

Messrs. Signal Oil & Gas Co.,
Signal Oil Building
Los Angeles, California

Dear Sirs:

The M/S "Belpamela" is due in San Pedro on June 8th or 9th and we hereby request that you please supply 325 tons of Diesel Oil under our contract with you to the above mentioned vessel.

Mr. Howard Hartry, 625 Beacon Street, San Pedro, California, will act as Agent on our behalf and if you will get in touch with him, he will be able to keep you posted as to the time of arrival of the vessel.

Yours very truly,
W. L. COMYN & SONS
By

Secretary

JGC:L
cc—Mr. Howard Hartry
625 Beacon Street
San Pedro, California [9

EXHIBIT T-1

Signal Oil and Gas Company
General Offices, Signal Oil Building
811 West Seventh Street
Los Angeles

June 11, 1934

W. L. Comyn & Sons,
427 Colman Building
Seattle, Washington

Gentlemen:

This will acknowledge receipt of your letter of June 5, 1934 requesting that we supply the M/S "Belpamela" with 325 tons of Diesel Oil when she docked in San Pedro on June 8th or 9th.

Please be advised that this vessel was supplied as requested.

Yours very truly,
SIGNAL OIL AND GAS COMPANY
By RAY W. METCALF
(Roth)
Order and Distribution Dept.

GR [98]

EXHIBIT U-1

June 11, 1934

Messrs. Signal Oil & Gas Company
Signal Oil Building
Los Angeles
California

Dear Sirs:

The M/S "Aurora" is due in San Pedro about June 22nd and we hereby request that you please supply this vessel with bunkers under our contract with you.

Mr. Howard Hartry, 625 Beacon Street, San Pedro, California, will be our agent for the vessel, and if you will keep in touch with him he will let you know the exact time the vessel is due.

At the present time of writing we do not know the quantity of bunkers we will require but we are radioing the Master of the vessel and as soon as we hear from him we will let you know at once the quantity of bunkers we will require.

Yours very truly,
W. L. COMYN & SONS
By
Secretary

JGC:L
cc—Mr. Howard Hartry
625 Beacon Street
San Pedro, California [99]

TRIPLICATE

No. 16430

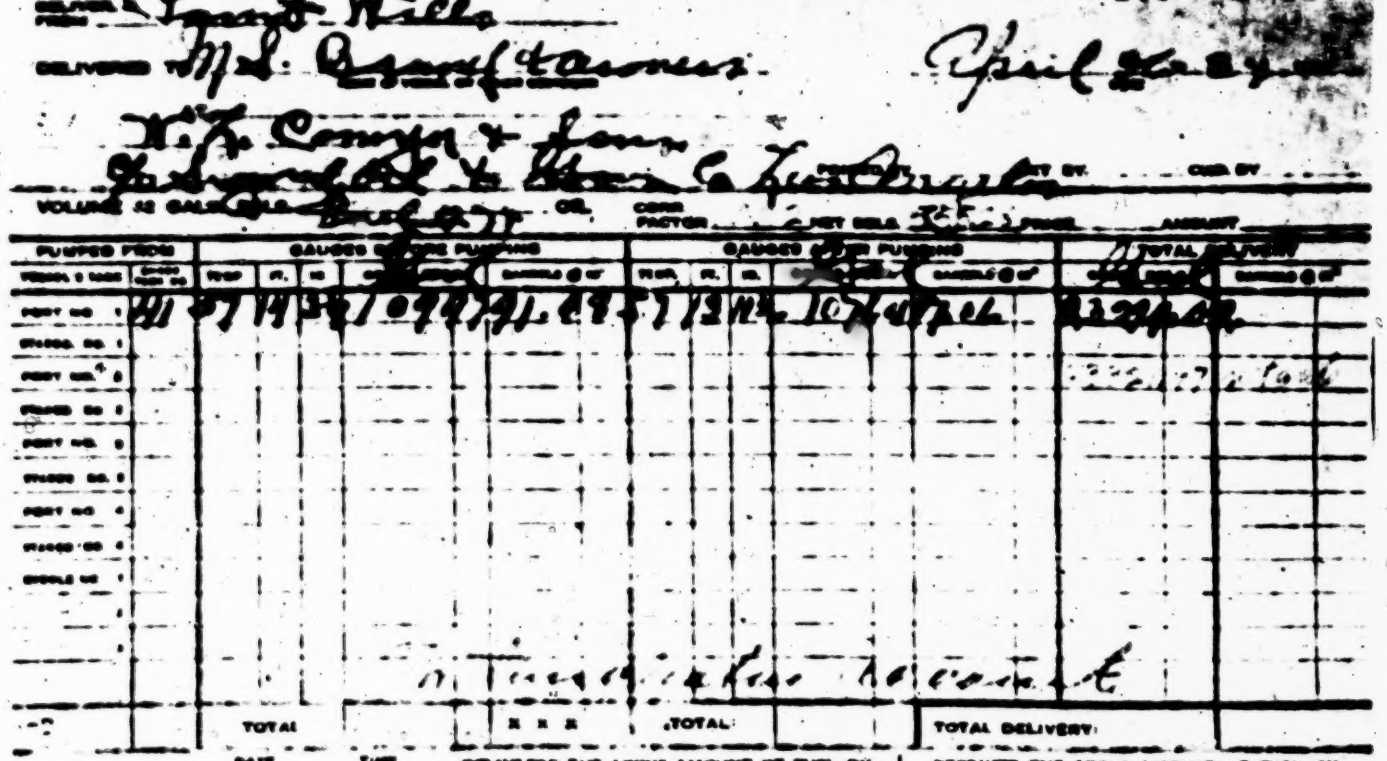

EXHIBIT A-2

100

100

EXHIBIT B-2

Quadruplicate
Signal Oil and Gas Company DA-5
Petroleum and Its Products
General Offices
811 West Seventh Street
Los Angeles, Calif.

MS Brand and Owners
C/o W. L. Comyn and Sons
427 Colman Bldg.
Seattle, Washington.

Invoice No. F-1750
Invoice Date April 26, 1934
Vendor's No. 2755
Date shipped April 26, 1934
Shipped to MS Brand and Owners
Destination at Point Wells, Wash.
Shipped via Line
Shipped from Point Wells, Wash.
Prepaid or collect
Customer's order No.
F.O.B.
Car No.—
Ticket No.—16430
Commodity—Fuel Oil, 27 Plus
Gross Gallons—
Gross Barrels—23,294.02
Grav.—
Temp.—57
Corr. Factor—1.0012

Net Shipment
Gallons—23,321.97
Barrels—555.28
Price—$1.15
Amount—$638.57 [101]

EXHIBIT C-2

W. L. Comyn & Sons
Freight Contractors
General Commission Merchants
Steamship Agents and Brokers
427 Colman Bldg.
Seattle, Wash.

May 1, 1934

Messrs. Signal Oil & Gas Company
Signal Oil Building
Los Angeles, California

Dear Sirs:

M/S Brand

The M/S "Brand" is due in Los Angeles about May 9th and we hereby request that you please supply 625 tons of Diesel Oil to the above vessel.

Messrs. Swayne & Hoyt, Ltd., will be acting as Agents and if you will keep in touch with them they will be able to advise as to the time and place they will require the oil barge to be put along side.

Thanking you for your attention in this matter, we beg to remain,

Yours very truly,
W. L. COMYN & SONS
By J. G. COMYN
Secretary.

JGC:L
cc—Messrs. Swayne & Hoyt Ltd.,
Chamber of Commerce Building
Los Angeles, California. [102]

EXHIBIT D-2

May 7, 1934

W. L. Comyn & Sons,
427 Colman Building,
Seattle, Washington

Gentlemen:

This will acknowledge receipt of your letter of May 1, 1934 requesting that we supply the M/S Brand, due in Los Angeles about May 9th, with six hundred twenty-five tons of Diesel Oil.

Arrangements have been made to comply with this request.

Yours very truly,
SIGNAL OIL AND GAS COMPANY
By .....
Order & Distribution Dept.

[103]

DUPLICATE COPY

RECEIPT FOR FUEL OIL DELIVERED—S. 800-F

[redacted] Oil Company of California

101

No 15648

DELIVERED TO [redacted] AND [redacted] SAN PEDRO CA. [illegible] 1942

AT [redacted] Signal Hill

Signal Contracting for Signal Oil

San Leo

order 776
P-974

PRICED BY _____ EXT. _____ CKD. BY _____

VOLUME 6 GALS. BBLS. [illegible] OIL CORR. FACTOR _____ NET BBLS. _____ PRICE _____ AMOUNT _____

PURCHASED FROM		GAUGES BEFORE PUMPING					GAUGES AFTER PUMPING					TOTAL DELIVERY	
VESSEL'S NAME	DATE NOM. TK.	TEMP.	FT.	IN.	GROSS BBLS.	BARRELS @ 60°	TEMP.	FT.	IN.	GROSS BBLS.	BARRELS @ 60°	GROSS BBLS.	BARRELS @ 60°
[illegible]		[illegible]											
[illegible]													
[illegible]													
[illegible]	

EXHIBIT G-2

Signal Oil and Gas Company DA-5
Petroleum and Its Products
General Offices
811 West Seventh Street
Los Angeles, Calif.

MS Brand and Owners
C/o W. L. Comyn and Sons
427 Colman Bldg.
Seattle, Washington
Invoice No. F-1798
Invoice Date May 11, 1934
Vendor's No. 18540
Date Shipped May 11, 1934
Shipped to MS Brand and Owners
Destination at Berth 166, San Pedro
Shipped via Barge #7
Shipped from El Segundo, Calif.
Prepaid or collect
Customer's Order No.
F.O.B.
Car No.—
Ticket No.—15648
Commodity—Fuel Oil, 27 Plus
Gross Gallons—
Gross Barrels—4,619.74
Grav.
Temp.—80
Corr. Factor—.9921

Net Shipment	
Gallons—	
Barrels—4,583.24	
Price—85¢	
Amount—	$3895.75
Plus: 2½% State Retail Sales Tax	97.39
	$3993.14

[105]

EXHIBIT H-2

W. L. Comyn & Sons
Freight Contractors
General Commission Merchants
Steamship Agents and Brokers
427 Colman Bldg.
Seattle, Wash.

May 1, 1934

Messrs. Signal Oil & Gas Company
Signal Oil Building
Los Angeles, California

Dear Sirs:

M/S "Stjerneborg"

The M/S "Stjerneborg" which is at present on our time charter will be loading a cargo of lumber to China and Japan about the middle of May at Grays Harbor. In our oil contract with you there is no price stipulated for bunkers at Aberdeen.

although the Standard Oil Company have an oil dock at this port.

As near as we can calculate at the present time, the vessel will probably need in the neighborhood of from 400 to 500 tons of Diesel oil, and under our present contract with you the price of Diesel Oil at either Willbridge, Oregon, or Point Wells, Washington, is $1.05 a barrel and we presume that the same rate will apply to Aberdeen as applies to Willbridge and Point Wells.

Please advise shortly that if will be in order to bunker the Stjerneborg at Aberdeen.

Yours very truly,

W. L. COMYN & SONS

By J. G. COMYN,

Secretary. [106]

EXHIBIT I-2

Los Angeles, California
5/7/34

Day Letter
W. L. Comyn & Sons
427 Coleman Bldg.
Seattle, Wash.

Reference Your Letter Regarding SS Stjerneborg Our Diesel Storage Aberdeen Very Limited and Unable Load Your Vessel at This Point Stop Can

You Arrange Load at Astoria Point Wells or Willbridge.

SIGNAL OIL AND GAS COMPANY

Chg. to
Signal Oil and Gas Co.,
811 West 7th St., Los Angeles
cc—
Telegram File
Mr. Metcalf [107]

EXHIBIT J-2

W. L. Comyn & Sons
Freight Contractors
General Commission Merchants
Steamship Agents and Brokers
427 Colman Bldg.
Seattle, Wash.

May 7, 1934.

Messrs. Signal Oil & Gas Co.
Signal Oil Building
Los Angeles, California

Dear Sirs:

This will acknowledge receipt of your telegram of today's date in reply to our letter of May the 1st regarding the bunkering of the M/S "Stjerneborg" at Aberdeen.

In view of your telegram we will bunker the vessel at Astoria.

We will let you know the quantity and the expected date we will require the bunkers at Astoria at the earliest possible moment.

Yours very truly,
W. L. COMYN & SONS
By J. G. COMYN
Secretary. [108]

EXHIBIT K-2

S79 15-M Seattle Wash 14 1200 P

1934 May 14 PM 12 19

Signal Oil & Gas Company
Signal Oil Bldg.

Stjerneborg Due Astoria Late Tonight Please Arrange Supply Five Hundred Twenty Five Tons Diesel Oil

W L COMYN & SONS [109]

EXHIBIT L-2

May 14, 1934

W. L. Comyn & Sons
427 Colman Building,
Seattle, Washington

Gentlemen:

This will acknowledge receipt of your letter of May 7th and your wire of May 14th relative to the M/S "Stjerneborg" which will be at Astoria as of

this date to pick up five hundred twenty five tons of Diesel Oil.

We have made arrangements to care for the above requirements as requested.

Yours very truly,

SIGNAL OIL AND GAS COMPANY

By R. N. M.

Order & Distribution Dept.

GR

cc—

R. H. Green

R. W. Metcalf

G. Krause [110]

TRIPLICATE
OFFICE COPY

RECEIPT FOR FUEL OIL DELIVERED ALONGSIDE

PORT No. 1

DELIVERED FROM Astoria Ore

DELIVERED [redacted] Motorship Stjernsborg Owners S.A.

To Signal Oil & Gas Co.
Wilmington
Los Angeles Cal.

733

PASSED BY _____ ENT. BY _____

VOLUME 42 GALS. BBLS. [redacted] OIL GRAVITY FACTOR .9996 NET BBLS. 3640.52 FEET _____ INCHES _____

PUMPED FROM		GAUGES BEFORE PUMPING					GAUGES AFTER PUMPING					TOTAL DELIVERED	
VESSEL'S TANKS	GRADE OF FUEL OIL	TEMP.	FT.	IN.	GAUGES	BARRELS @ 60°	TEMP.	FT.	IN.	GAUGES	BARRELS @ 60°	GALLONS	BARRELS @ 60°
PORT NO. 1													
STARBD. NO. 1	2	44°	37	7/8	2307		44°	5	7/8	2543		10636	
PORT NO. 2													
STARBD. NO. 2												36402	866.7
PORT NO. 3													
STARBD. NO. 3													
PORT NO. 4													
STARBD. NO. 4													
SLOP TANK NO. 1													
" 2													
" 3													
		TOTAL				X X X	TOTAL					TOTAL DELIVERED	

DATE	TIME
10-15	6 P.M.
11-55	6 A.M.
	M.

DELIVERED THE ABOVE AMOUNT OF FUEL OIL AS WITNESSED BY MASTER'S SIGNAL

W Humphrell
FOR CHIEF ENGR. OR MASTER

RECEIVED THE ABOVE AMOUNT OF FUEL OIL AS INDICATED BY MASTER'S SIGNAL

[redacted]
MASTER OR CHIEF ENGINEER

SOCO 1 [illegible] SHIP TO [illegible]

ARMED PURSERS _____ FUEL _____ AMPL _____

ISSUE NO. 2
411

411

EXHIBIT N-2

Triplicate

Signal Oil and Gas Company DA-5
Petroleum and Its Products
General Offices
811 West Seventh Street
Los Angeles, Calif.

MS Stjerneborg and Owners
c/o W. L. Comyn and Sons
427 Colman Bldg.
Seattle, Washington.

Invoice No. F-1813
Invoice Date May 15, 1934
Vendor's No. 733
Date shipped May 15, 1934
Shipped to MS Stjerneborg & Owners
Destination at Astoria, Oregon
Shipped via Line
Shipped from Astoria, Oregon
Prepaid or collect
Customer's order No.
F. O. B.
Car No.—
Ticket No.—17884
Commodity—Fuel Oil 27 Plus
Gross Gallons—
Gross Barrels—3,643.98
Grav.—
Temp.—61
Corr. Factor—.9996

Net Shipment
Gallons—
Barrels—3,642.52
Price—$1.05
Amount—$3,824.65 [112]

EXHIBIT O-2

General Steamship Corporation
Chartering Department
240 Battery Street
San Francisco, California, U. S. A.
Branch Offices
Los Angeles, Calif.-Portland, Ore.-Seattle, Wash.

TIME CHARTER
Government Form
Approved by the New York
Produce Exchange.
Cable Address
"Gensteamco"

Codes All Codes Private Codes
General Steamship Corporation
Seattle, Washington
Chartering Department
Ship Brokers

This Charter Party made and concluded upon in the City of Seattle, Washington, March 8th, 1934. Between West Indian Trading Company, Copenhagen, Denmark, Time-charter. Owners of the good steel screw Motorship Brand of Porsgrund, Nor-

way of 4819 tons gross register, and 2829 tons net register, having engines of 534 nominal horse power and with hull, machinery and equipment in a thoroughly efficient state, and classed highest at Norske Veritas of about 515,850 cubic feet grain capacity, and 8880 tons dead weight capacity (cargo and bunkers, including stores not exceeding fifty tons) on Lloyd's Summer freeboard, inclusive of permanent bunkers, which are of the capacity of about 1300 tons of coal, speed about 10/10½ knots on about 9 tons diesel oil per day, now trading, and W. L. Comyn & Sons Charterers of the City of Seattle, Washington.

Witnesseth, That the said Owners agree to let, and the said Charterers agree to hire the said Steamship from the time of delivery, for one trip, duration about sixty (60) days. Trading within Institute Warranties Limits, copy attached hereto. Charterers to have liberty to sublet the Steamer for all or any part of the time covered by this Charter, but Charterers remaining responsible for the fulfillment of this Charter Party.

Steamer to be placed at the disposal of the Charterers, at a United States West Coast or British Columbia port in such dock or at such wharf or place (where she may always safely lie afloat, at all times of tide), as the Charterers may direct, and being on her delivery ready to receive cargo with clean-swept holds and tight, staunch, strong and in every way fitted for the service, having water ballast, winches with capacity and power to run all the

winches at one and the same time (and with full complement of officers, sea-men, engineers and firemen for a vessel of her tonnage), to be employed, in carrying lawful merchandise, including petroleum or its products, but excluding asphalt in bulk, pitch in bulk, heavy ore, injurious cargo and explosives, in such lawful trades, between safe port and/or ports in British North America, and/or United States of America, and/or West Indies, and/or Central America, and/or Carribean Sea, and/or Gulf of Mexico, and/or Mexico, and/or South America, excluding River St. Lawrence from October 1st to May 1st, White Sea, Black Sea and the Baltic out of season, Magdalena River, and all unsafe ports; as the Charterers or their Agents shall direct, on the following conditions:

1. That the Owners shall provide and pay for all provisions, wages and Consular, shipping and discharging fees of the Captain, Officers, Engineers, Firemen and Crew; shall pay for the insurance of the vessel, also for all the cabin, deck, engine-room and other necessary stores, and maintain her class and keep the steamer in a thoroughly efficient state in hull, machinery and equipment for and during the service.

2. That the Charterers shall provide and pay for all the Coals except as otherwise agreed, Port Charges, Pilotages, Agencies, Commissions, Consular Charges (except those pertaining to the Captain, Officers or Crew), and all other usual expenses except those before stated, but when the vessel puts

into a port for causes for which steamer is responsible, then all such charges incurred shall be paid by owners.

Charterers are to provide necessary dunnage and shifting boards, but Owners to allow them the use of the dunnage and shifting boards already aboard Steamer. Charterers to have the privilege of using shifting boards for dunnage, they making good for any damage thereto.

3. That the Charterers shall accept and pay for all Coal in the Steamer's Bunkers and the Owners shall, on expiration of this Charter Party, pay for all Coal left in the Bunkers at Ninety Cents (90¢) U. S. Currency per barrel at the respective places where she is delivered to them.

4. That the Charterers shall pay for the use and hire of the said Vessel Six Shillings and One and One Half Pence (6/1½) British Sterling per deadweight ton as above per Calendar Month, commencing on and from the day of her delivery, as aforesaid, and at and after the same rate for any part of a month, hire to continue until the hour of the day of her re-delivery in like good order and condition, ordinary wear and tear excepted, to the Owners (unless lost) at a safe port in United Kingdom or Continent, Bordeaux/Hamburg range.

5. Payment of said hire to be made in Seattle in cash at the current short sight rate of Exchange, or in approved Bankers sight bills on London, at Owners' option, semi-monthly in advance, and for the last half month or part of same the approximate

amount of hire, and shoud same not cover the actual time, hire is to be paid for the balance day by day, as it becomes due, if so required by Owners, unless bank guarantee or deposit is made by the Charterers, otherwise failing the punctual and regular payment of the hire, or bank guarantee, or any breach of the Charter Party as herein specified, the Owners shall be at liberty to withdraw the vessel from the service of the Charterers, without prejudice to any claim they (the Owners) may otherwise have on the Charterers in pursuance of this charter. Delivery to count from 7 a. m. on the working day following that on which written notice has been given before 4 p. m., but if required by Charterers, loading to commence at once, such time used to count as hire.

6. That the cargo or cargoes be laden and or discharged in any dock or at any wharf or place that the Charterers or their Agents may direct, provided the Steamer can always safely lie afloat at any time of tide, except at such places where it is customary for similar size steamers to safely lie aground.

7. That the whole reach of the Vessel's Holds, Decks, and usual places of loading and accommodations of the Ship (not more than she can reasonably stow and carry), shall be at the Charterers' disposal, reserving only proper and sufficient space for Ship's officers, crew, tackle, apparel, furniture, provisions, stores and fuel.

8. That the Captain shall prosecute his voyages with the utmost despatch, and shall render all customary assistance with Ship's crew and boats. The

Captain, (although appointed by the Owners), shall be under the orders and direction of the Charterers as regards employment or agency; and Charterers are to load, stow, and trim the cargo at their expense under the supervision of the Captain, who is to sign Bills of Lading for cargo as presented, in conformity with Mates' or Tally Clerks' receipts.

9. That if the Charterers shall have reason to be dissatisfied with the conduct of the Captain, Officers, or Engineers, the Owners shall on receiving particulars of the complaint, investigate the same, and, if necessary, make a change in the appointments.

10. That the Charterers shall have permission to appoint a Supercargo, who shall accompany the steamer and see that voyages are prosecuted with the utmost despatch. He is to be furnished, free of charge, with first-class accommodations, and same fare as provided for Captain's table. Provided Charterers do not use the Supercargo privilege, owners to victual Pilots, Tally Clerks, Stevedore's Foreman, Customs Officers, etc., as customary, free, but if Supercargo privilege is used, Charterers to pay victualing of Pilots, Tally Clerks, etc., at the rate of 25¢ per meal.

11. That the Master shall be furnished from time to time with all requisite instructions and sailing directions, and shall keep a full and correct Log of the voyage or voyages, which are to be patent to the Charterers or Agents, and to furnish the Charter-

ers, their Agents or Supercargo, when required, a true daily copy of Logs, showing the course of steamer and distance run and the consumption of coal.

12. That the Master shall use diligence in caring for the ventilation of the cargo.

13. Quantity of bunkers on delivery as on board. Bunkers on redelivery not less than 300 tons.

14. That if required by Charterers, time not to commence before April 15, 1934 and should Steamer not be ready for delivery on or before April 25, 1934 Charterers or their Agents to have the option of cancelling this Charter at any time not later than the day of Steamer's readiness.

15. That in the event of the loss of time from deficiency of men or stores, fire, breakdown or damages to hull, machinery or equipment, grounding, detention by average accidents to ship or cargo, drydocking for the purpose of examination or painting bottom, or by any other cause preventing the full working of the vessel, the payment of hire shall cease for the time thereby lost, and if upon the voyage the speed be reduced by defect in or breakdown of any part of her hull, machinery or equipment, the time so lost, and the cost of any extra coal consumed in consequence thereof, and all extra expenses shall be deducted from the hire.

16. That should the Vessel be lost, money paid in advance and not earned (reckoning from the date of loss or being last heard of) shall be returned to the

Charterers at once. The act of God, enemies, fire, restraint of Princes, Rulers and People, and all dangers and accidents of the Seas, Rivers, Machinery, Boilers and Steam Navigation, and errors of Navigation throughout this Charter Party, always mutually excepted.

17. That should any dispute arise between Owners and the Charterers, the matter in dispute shall be referred to three persons at Seattle, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them, shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the Court.

18. That the Owners shall have a lien upon all cargoes, and all sub-freights for any amounts due under this Charter, and the Charterers to have a lien on the Ship for all moneys paid in advance and not earned, and any overpaid hire or excess deposit to be returned at once.

19. That all derelicts and salvage shall be for Owners' and Charterers' equal benefit after deducting Owners' and Charterers' expenses and Crews proportion. General average, if any, to be according to York-Antwerp Rules, 1924.

If the Owners of the ship shall have exercised due diligence to make said ship in all respects seaworthy, and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from fault or negligence of the

pilot, master or crew, in the navigation or management of the ship; or from latent or other defects, or unseaworthiness of the ship, whether existing at time of shipment or at the beginning of the voyage, but not discoverable by due diligence, the Consignees or Owners of the cargo shall not be exempted from liability for contribution in General Average, or for any special charges incurred, but with the Shipowner, shall contribute in General Average, and shall pay such special charges, as if such danger, damage or disaster had not resulted from such fault, negligence, latent or other defect, or unseaworthiness.

20. Coals used by steamer while off hire, also for cooking, condensing water for crew's use, or for grates and stoves to be agreed to as to quantity, and the cost of replacing same, to be allowed by Owners.

21. That as the Steamer may be from time to time employed in tropical waters during the term of this Charter, Steamer is to be docked, bottom cleaned and painted whenever Charterers and Master think necessary, at least once in every six months, reckoning from time of last painting, and payment of the hire to be suspended until she is again in proper state for the service. Fumigation when necessary for Charterer's account. All taxes that may be levied by any Government other than that of the Owner's domicile or the Ship's *glad* in respect to the earnings of the vessel while under this charter are for account of Charterers.

22. Owners shall provide gear (for all derricks) capable of handling lifts up to three tons, and maintain the gear of the ship as fitted, also provide ropes, falls, slings and blocks; but gear for heavier lifts shall be for Charterers' account. Owners also to provide lanterns and oil for nightwork, and steamer to give use of electric light, when so fitted. The Charterers to have the use of any gear on board the steamer.

23. Steamer to work night and day, if required by Charterers, and all winches to be at Charterers' disposal during loading and discharging; steamer to provide one winchman per hatch, men to work same day and night, as required, Charterers agreeing to pay winchmen, and crew including officers for overtime work done in accordance with the working hours and rates stated in the ship's articles. If the rules of the port, or labor unions, prevent crew from driving winches, shore Winchmen to be paid by Charterers. In the event of short steam, or a disabled winch, or winches, Owners to pay for shore engine, or engines, in lieu thereof, if required, and pay any loss of time occasioned thereby.

24. It is also mutually agreed that this Charter is subject to all the terms and provisions of and all the exemptions from liability contained in the Act of Congress of the United States approved on the 13th day of February, 1893, and entitled "An Act relating to Navigation of Vessels, etc.," and also subject to the rules governing the Steamship Trade of the New York Produce Exchange.

25. Nothing herein stated is to be construed as a demise of the Steamer to the Time Charterers. The Owners to remain responsible for the navigation of the Steamer, insurance, crew, and all other matters, same as when trading for their own account.

26. A commission of Two and One Half (2½%) per cent, upon the gross amount of this Charter, payable by the Steamship and Owners due to General Steamship Corporation, for division with Joh. Bruhn, Copenhagen upon the signing hereof, Steamship lost or not lost, and also upon any continuation or extension of this Charter or on sale of Vessel.

27. An address commission of 2 per cent. payable to W. L. Comyn & Sons.

28. Penalty for non-performance of this Contract, estimated amount of damages.

29. Wherever the word "Coal" may apper in this charter party it shall be understood to mean "Diesel Oil Fuel", and wherever the word "Steamer" may appear, it shall be understood to mean "Motorship".

30. Charterers privilege bunkering for their account at San Pedro northbound enroute to vessels port of delivery on their time and expense. If Charterers exercise this option, canceling date is extended to April 26, 1934, and if required Charterers are to supply bunker oil, at Ninety Cents (90¢) per barrel, sufficient to bring vessel to port of delivery.

31. Charterers have the option of carrying up to

3,500 tons of lead concentrates and/or zinc concentrates.

WEST INDIAN TRADING
COMPANY,
Copenhagen
Time-Charter-Owners of the
Norwegian Motorship
"Brand"
By GENERAL STEAMSHIP
CORPN. LTD.,
As Agents
By H. A. JEANS,
Chartering Department.
By Telegraphic authority received from Joh Bruhn,
Copenhagen.
W. L. COMYN & SONS
By W. L. COMYN,
President

Witness to both signatures
J. G. COMYN

The original Charter Party in our possession.
GENERAL STEAMSHIP CORP.,
701 Fourth Ave.,
Seattle, Wash.,
Brokers. [113]

EXHIBIT P-2

General Steamship Corporation
Chartering Department
240 Battery Street.
San Francisco, California, U. S. A.
Branch Offices
Los Angeles, Calif.-Portland, Ore.-Seattle, Wash.

TIME CHARTER
Government Form
Approved by the New York
Produce Exchange.
Cable Address
"Gensteamco"
Codes All Codes Private Codes

This Charter Party made and concluded upon in the City of Seattle, Washington, January 27th, 1934 between Dampskibsselsk Danneborg (C. K. Hansen, Mgr.) owners of the good single Screw Motorship Stjerneborg of Copenhagen, Denmark, of 4532 tons gross register, and 2772 tons net register, having engines of 541 nominal horse power and with hull, machinery and equipment in a thoroughly efficient state, and classed +100 A 1 at Lloyds of about 486,000 cubic feet grain capacity, and 8475 tons dead weight capacity (cargo and bunkers, including stores not exceeding fifty tons) on Lloyd's Summer freeboard, inclusive of permanent bunkers, which are of the capacity of about 1000 tons of coal, speed about 11½ knots on about 8½ to 9 tons of diesel oil

per day, now trading and W. L. Comyn & Sons, Charterers of the City of Seattle, Washington.

Witnesseth, That the said Owners agree to let, and the said Charterers agree to hire the said Steamship from the time of delivery, for about five to seven months Trading within Institute Warranties Limits, copy attached hereto. If vessel enters a war zone and owners consider it necessary to cover eventual war risk, same to be for charterer's account on owner's valuation of two million (2,000,000) Danish Kroner. Charterers to have liberty to sublet the Steamer for all or any part of the time covered by this Charter, but Charterers remaining responsible for the fulfillment of this Charter Party.

Steamer to be placed at the disposal of the Charterers, at a United States West Coast or British Columbia port in such dock or at such wharf or place (where she may always safely lie afloat, at all times of tide), as the Charterers may direct, and being on her delivery ready to receive cargo with clean-swept holds and tight, staunch, strong and in every way fitted for the service, having water ballast, winches with capacity and power to run all the winches at one and the same time (and with full complement of officers, seamen, engineers and firemen for a vessel of her tonnage), to be employed in carrying lawful merchandise, including petroleum or its products, but excluding asphalt in bulk, pitch in bulk, heavy ore and injurious cargo, in such lawful trades, between safe port and/or ports in British North America, and/or United States of America,

and/or West Indies, and/or Central America, and/or Caribbean Sea, and/or Gulf of Mexico, and/or Mexico, and/or South America and/or Europe, and/or Africa, and/or Asia, and/or Australia, excluding River St. Lawrence from October 1st to May 1st, White Sea, Black Sea and the Baltic out of season, Magdalena River, and all unsafe ports: as the Charterers or their Agents shall direct, on the following conditions:

1. That the Owners shall provide and pay for all provisions, wages and Consular shipping and discharging fees of the Captain, Officers, Engineers, Firemen and Crew; shall pay for the insurance of the vessel, also for all the cabin, deck, engine-room and other necessary stores, and maintain her class and keep the steamer in a thoroughly efficient state in hull, machinery and equipment for and during the service.

2. That the Charterers shall provide and pay for all the Coals except as otherwise agreed, Port Charges, Pilotages, Agencies, Commissions, Consular Charges (except those pertaining to the Captain, Officers or Crew), and all other usual expenses except those before stated, but when the vessel puts into a port for causes for which steamer is responsible, then all such charges incurred shall be paid by owners.

Charterers are to provide necessary dunnage and shifting boards, but Owners to allow them the use of the dunnage and shifting boards already aboard Steamer. Charterers to have the privilege of using

shifting boards for dunnage, they making good for any damage thereto.

3. That the Charterers shall accept and pay for all Coal in the Steamer's Bunkers and the Owners shall, on expiration of this Charter Party, pay for all Coal left in the Bunkers at Ninety Cents (90¢) U. S. Currency per barrel.

4. That the Charterers shall pay for the use and hire of the said Vessel, Three Shillings and Nine Pence (3/9) British Sterling per deadweight ton as above per Calendar Month, commencing on and from the day of her delivery, as aforesaid, and at and after the same rate for any part of a month; hire to continue until the hour of the day of her re-delivery in like good order and condition, ordinary wear and tear excepted, to the Owners (unless lost) at a safe port in Australia or China or Japan.

5. Payment of said hire to be made in Seattle in cash at the current short sight rate of Exchange, or in approved Bankers' sight bills on London, at Owners' option, semi-monthly in advance, and for the last half month or part of same the approximate amount of hire, and should same not cover the actual time, hire is to be paid for the balance day by day, as it becomes due, if so required by Owners, unless bank guarantee or deposit is made by the Charterers, otherwise failing the punctual and regular payment of the hire, or bank guarantee, or any breach of the Charter Party as herein specified, the Owners shall be at liberty to withdraw the vessel from the service of the Charterers, without preju-

dice to any claim they (the Owners) may otherwise have on the Charterers in pursuance of this Charter. Delivery to count from 7 a. m. on the working day following that on which written notice has been given before 4 p. m., but if required by Charterers, loading to commence at once, such time used to count as hire.

6. That the cargo or cargoes be laden and/or discharged in any dock or at any wharf or place that the Charterers or their Agents may direct, provided the Steamer can always safely lie afloat at any time of tide, except at such places where it is customary for similar size steamers to safely lie aground.

7. That the whole reach of the Vessel's Holds, Decks, and usual places of loading and accommodations of the Ship (not more than she can reasonably stow and carry), shall be at the Charterers' disposal, reserving only proper and sufficient space for Ship's officers, crew, tackle, apparel, furniture, provisions, stores and fuel.

8. That the Captain shall prosecute his voyages with the utmost despatch, and shall render all customary assistance with Ship's crew and boats. The Captain (although appointed by the Owners), shall be under the orders and direction of the Charterers as regards employment or agency; and Charterers are to load, stow, and trim the cargo at their expense under the supervision of the Captain, who is to sign Bills of Lading for cargo as presented, in conformity with Mates' or Tally Clerks' receipts.

9. That if the Charterers shall have reason to be dissatisfied with the conduct of the Captain, Officers, or Engineers, the Owners shall on receiving particulars of the complaint, investigate the same, and, if necessary, make a change in the appointments.

10. That the Charterers shall have permission to appoint a Supercargo, who shall accompany the steamer and see that voyages are prosecuted with the utmost despatch. He is to be furnished, free of charge, with first-class accommodations, and same fare as provided for Captain's table. Provided Charterers do not use the Supercargo privilege, owners to victual Pilots, Tally Clerks, Stevedore's Foreman, Customs Officers, etc., as customary, free, but if Supercargo privilege is used, Charterers to pay victualing of Pilots, Tally Clerks, etc., at the rate of 25¢ per meal.

11. That the Master shall be furnished from time to time with all requisite instructions and sailing directions, and shall keep a full and correct Log of the voyage or voyages, which are to be patent to the Charterers or Agents, and to furnish the Charterers, their Agents or Supercargo, when required, a true daily copy of Logs, showing the course of steamer and distance run and the consumption of coal.

12. That the Master shall use diligence in caring for the ventilation of the cargo.

13. Quantity of bunkers on delivery as on board. Bunkers on redelivery not less than 400 tons.

14. That if required by Charterers, time not to commence before March 1st, 1934 and should Steamer not be ready for delivery on or before March 25th, 1934 Charterers or their Agents to have the option of cancelling this Charter at any time not later than the day of Steamer's readiness.

15. That in the event of the loss of time from deficiency of men or stores, fire, breakdown or damages to hull, machinery or equipment, grounding, detention by average accidents to ship or cargo, drydocking for the purpose of examination or painting bottom, or by any other cause preventing the full working of the vessel, the payment of hire shall cease for the time thereby lost; and if upon the voyage the speed be reduced by defect in or breakdown of any part of her hull, machinery or equipment, the time so lost, and the cost of any extra coal consumed in consequence thereof, and all extra expenses shall be deducted from the hire.

16. That should the Vessel be lost, money paid in advance and not earned (reckoning from the date of loss or being last heard of) shall be returned to the Charterers at once. The act of God, enemies, fire, restraint of Princes, Rulers and People, and all dangers and accidents of the Seas, Rivers, Machinery, Boilers and Steam Navigation, and errors of Navigation throughout this Charter Party, always mutually excepted.

17. That should any dispute arise between Owners and the Charterers, the matter in dispute shall be referred to three persons at Seattle, one to be

appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them, shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the Court.

18. That the Owners shall have a lien upon all cargoes, and all sub-freights for any amounts due under this Charter, and the Charterers to have a lien on the Ship for all moneys paid in advance and not earned, and any overpaid hire or excess deposit to be returned at once.

19. That all derelicts and salvage shall be for Owners' and Charterers' equal benefit after deducting Owners' and Charterers' expenses and Crew's proportion. General average, if any, to be according to York-Antwerp Rules, 1924.

If the Owners of the ship shall have exercised due diligence to make said ship in all respects seaworthy, and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from fault or negligence of the pilot, master or crew, in the navigation or management of the ship, or from latent or other defects, or unseaworthiness of the ship, whether existing at time of shipment or at the beginning of the voyage, but not discoverable by due diligence, the Consignees or Owners of the cargo shall not be exempted from liability for contribution in General Average, or for any special charges incurred, but with the Shipowner, shall contribute in General Average, and shall pay such special charges, as if such danger,

damage, or disaster had not resulted from such fault, negligence, latent or other defect, or unseaworthiness.

20. Coals used by steamer while off hire, also for cooking, condensing water for crew's use, or for grates and stoves to be agreed to as to quantity, and the cost of replacing same, to be allowed by Owners.

21. That as the Steamer may be from time to time employed in tropical waters during the term of this Charter, Steamer is to be docked, bottom cleaned and painted whenever Charterers and Master think necessary, at least once in every six months, reckoning from time of last painting, and payment of the hire to be suspended until she is again in proper state for the service.

Fumigation when necessary for Charterer's account. All taxes that may be levied by any Government other than that of the Owner's domicile or the Ship's flag in respect to the earnings of the vessel while under this Charter are for account of Charterers.

22. Owners shall provide gear (for all derricks) capable of handling lifts up to three tons, and maintain the gear of the ship as fitted, also provide ropes, falls, slings and blocks; but gear for heavier lifts shall be for Charterers' account. Owners also to provide lanterns and oil for nightwork, and steamer to give use of electric light, when so fitted. The Charterers to have the use of any gear on board the steamer.

23. Steamer to work night and day, if required by Charterers, and all winches to be at Charterers' disposal during loading and discharging; steamer to provide one winchman per hatch to work same day and night, as required, Charterers agreeing to pay winchman, and crew including officers for overtime work done in accordance with the working hours and rates stated in the ship's Articles. If the rules of the port, or labor unions, prevent crew from driving winches, shore Winchmen to be paid by Charterers. In the event of short steam, or a disabled winch, or winches, Owners to pay for shore engine, or engines, in lieu thereof, if required, and pay any loss of time occasioned thereby.

24. It is also mutually agreed that this Charter is subject to all the terms and provisions of and all the exemptions from liability contained in the Act of Congress of the United States approved on the 13th day of February, 1893, and entitled, "An Act relating to Navigation of Vessels, etc.," and also subject to the rules governing the Steamship trade of the New York Produce Exchange.

25. Nothing herein stated is to be construed as a demise of the Steamer to the Time Charterers. The Owners to remain responsible for the navigation of the Steamer, insurance, crew, and all other matters, same as when trading for their own account.

26. A commission of Two & One Half (2½%) per cent. upon the gross amount of this Charter, payable by the Steamship and Owners due to Gen-

eral Steamship Corporation, upon the signing hereof, Steamship lost or not lost, and also upon any continuation or extension of this Charter or on sale of Vessel.

27. An address commission of 2½ per cent. payable to for division with Joh. Bruhn, Copenhagen, W. L. Comyn & Sons.

28. Penalty for non-performance of this Contract, estimated amount of damages.

29. Wherever the word "Coal" may appear in this Charter party it shall be understood to mean "Diesel Oil Fuel", and wherever the word "Steamer" may appear, it shall be understood to mean "Motorship".

DAMPSKIBSSELSK DANNEBORG.
(C. K. HANSEN, Mgr.),
Owners of the Motorship "Stjerneborg."
By General Steamship Corp. Ltd.
as Agents,
By J. A. JEANS,
Charter Department,
By telegraphic authority received from
Joh. Bruhn, Copenhagen.
W. L. COMYN & SONS,
By W. LESLIE COMYN, President.

Witness to both signatures:

[Witness] J. L. COMYN.

(Original)

EXHIBIT Q-2

M/S "Stjerneborg"

PORTS OF CALL

Arr. Astoria, Oregon, May 15, 1934.
Left Astoria, Oregon, May 16, 1934.
Arr. Grays Harbor, Washington, May 16, 1934.
Left Grays Harbor, Washington, June 26, 1934.
Arr. New Westminster, B. C., June 27, 1934.
Left New Westminster, B. C., June 30, 1934.
Arr. Vancouver, B. C., June 30, 1934.
Left Vancouver, B. C., July 8, 1934.
(Voyage to Australia, other foreign countries, and return.)
Arr. San Pedro, California, December 30, 1934.
Left San Pedro, California, December 30, 1934.
Arr. Marshfield, Oregon, January 2, 1935.
Left Marshfield, Oregon, January 4, 1935.
Arr. Empire City, Oregon, January 4, 1935.
Left Empire City, Oregon, January 7, 1935.
Arr. North Bend, Oregon, January 7, 1935.
Left North Bend, Oregon, January 9, 1935.
Arr. Wauna, Oregon, January 10, 1935.
Left Wauna, Oregon, January 11, 1935.
Arr. Longview, Washington, January 11, 1935.
Left Longview, Washington, January 12, 1935.
Arr. Linton, Oregon, January 12, 1935.
Left Linton, Oregon, January 14, 1935.
(Voyage to the Orient and return.)
Arr. San Pedro, California, May 4, 1935.
Left San Pedro, California, May 6, 1935.

Arr. San Francisco, California, May 8, 1935.
Left San Francisco, California, May 11, 1935.
Arr. Grays Harbor, Washington, May 14, 1935.
Left Grays Harbor, Wash., August 22, 1935.

[115]

EXHIBIT R-2

M/S Brand

PORTS OF CALL

Arr. Los Angeles, California, May 10, 1934.
Left Los Angeles, California, May 11, 1934.
Passed Colon, Panama Canal, May 26, 1934, en route for Europe.
On return from Europe,
Arr. Balboa, Panama Canal, July 31, 1934.
Arr. Los Angeles, California, Aug. 22, 1934.
Left Los Angeles, California, Aug. 23, 1934.
Arr. Vancouver, B. C., Aug. 27, 1934.
Left Vancouver, B. C., Sept. 1, 1934.
(Voyage to the Orient and return.)
Arr. Los Angeles, California, Mar. 28, 1935.
Left Los Angeles, California, Mar. 28, 1935.
Arr. San Francisco, California, Mar. 30, 1935.
Left San Francisco, California, Apr. 2, 1935.
Arr. Raymond, Washington, Apr. 4, 1935.
Left Raymond, Washington, Apr. 7, 1935.
Arr. Aberdeen, Washington, Apr. 7, 1935.
Left Aberdeen, Washington, Apr. 13, 1935.
(Voyage to the Orient and return.)

Arr. Columbia River, June 1, 1935.
Left Columbia River, June 2, 1935.
Arr. Raymond, Washington, June 3, 1935.
Left Raymond, Washington, June 5, 1935.
Arr. Aberdeen, Washington, June 5, 1935.
Left Aberdeen, Washington, June 7, 1935.
Arr. Port Angeles, Washington, June 8, 1935.
Left Port Angeles, Washington, June 10, 1935.

[116]

EXHIBIT S-2

PLEDGE AGREEMENT

For valuable considerations and to secure the payment by the undersigned of accounts owing to Signal Oil and Gas Company, a Delaware corporation, hereinafter termed "pledgee", for fuel oil supplied to the vessels listed below under charter to the undersigned, the undersigned does hereby assign, transfer and pledge to Signal Oil and Gas Company, a Delaware corporation, the following chattels, evidences of indebtedness and liability, bonds, stocks, warrants, commercial paper, credits, choses, claims and demands, to-wit:

1. Two certificates of deposit in the First National Bank of Seattle in the amount of $5000.00 each payable to the undersigned and each dated April 4, 1934.

2. Claims for insurance under policies BC1932 and BC1933 of the Union Marine & General Accident Company, Limited, of Liverpool, being policies of insurance each in the amount of £2,000 on the M/S "Stjerneborg"

and M/S "Sunnanvik"; open policy BC 1506 in the amount of £2000 in the same company on the M/S "Stjerneborg".

3. Claim for moneys due from the owners of the M/S "Samuel Bakke" in the amount of $1500.00.

4. Assignment of our so-called London account in the estimated amount of approximately $6500.00, said assignment being dated June 1, 1934.

5. Equity of the undersigned in collateral pledged to National Bank of Commerce of Seattle.

6. Freights due the undersigned from cargo loaded and to be loaded on the M/S "Sterneborg" and the M/S "Sunnanvik" on which First National Bank of Seattle holds assignments dated April 18, 1934, which freights are collected by the undersigned and delivered to the First National Bank of Seattle.

7. Stocks in companies as follows:

150 shares Standard Oil of California common.
25 shares Great Northern preferred.
25 shares Atchison, Topeka and Santa Fe.
25 shares Southern Pacific.
100 shares Curtis Wright.
27 and 53/100 shares North American.
25 shares United Aircraft.
100 shares National City Bank of New York.

all subject to a pledge heretofore given on the 13th day of February, 1932, to the First National Bank of Seattle. [117]

The indebtedness which this pledge agreement is given to secure is as follows:

Fuel oil supplied to—	
M/S Stjerneborg	$3,824.65
S/S Nordpol	1,303.68
M/S Belpamela	2,114.51
M/S Sunnanvik	2,233.22
M/S Samuel Bakke	633.38
M/S Brand	4,631.71
M/S Nordhval	3,511.80

The above listed collateral is now deposited with, and pledged to, the First National Bank of Seattle to secure the payment of indebtedness owing by the undersigned to it in the amount of $48,224.84, which amount includes a promissory note in the principal amount of $1,000.00 signed by R. C. Ward, payable to and endorsed by the undersigned, and such further advances as the First National Bank of Seattle may make not in excess of $9000.00 for the payment of charter hire on the M/S "Stjerneborg". It is expressly agreed that this assignment and pledge is subject to the prior pledgee's lien of said First National Bank.

The undersigned hereby directs said First National Bank to deliver said collateral and any sums realized therefrom to the Signal Oil and Gas Company, a Delaware corporation, when the pledgee's

lien of said First National Bank shall have been fully satisfied. In case of depreciation of value of any of said collateral, or if the pledgee should deem itself insecure, the undersigned agrees to deposit additional collateral in an amount or value satisfactory to the pledgee. The pledgee may, without previous demand upon or notice to the undersigned, or advertisement of any kind, in case of non-payment of all or any part of such indebtedness and liabilities or default in any terms or conditions of any instrument given in connection therewith, or of depreciation of the value of any of said collateral, or if it should deem itself insecure, realize upon the collateral or any part thereof by selling the whole or any part thereof at public or private sale, with or without notice, and for cash, credit, or future delivery, and apply the proceeds, after deducting all court or other costs and expenses incurred in the preservation, collection, sale or delivery of said collateral, to the payment of all or any portion of said indebtedness. The undersigned agrees to pay any deficiency remaining after such application. If the sale is public, the pledgee may be a purchaser at said sale. Nothing herein contained shall preclude the pledgee from collecting on any indebtedness or obligation hereby secured without resorting to said collateral. Nothing herein contained shall constitute any release or waiver of any lien which Signal Oil and Gas Company, a Delaware corporation, may have on or against the vessels hereinabove described for fuel oil supplied to such vessels.

The pledgee shall not be required, except at its option, to realize upon any collateral, collect the principal, interest or dividends thereon, exercise any rights or options of the undersigned pertaining thereto, make presentment, demand, protest or [118] give notice of protest, non-acceptance or non-payment, to keep the collateral insured, nor to do any other thing for the protection, enforcement or collection of such collateral; and under no circumstances shall pledgee be in any way responsible for failure to act in such behalf; nor shall it be in any way responsible for any negligent act or default of any of its collecting agents or correspondents. The undersigned, however, agrees that it will repay to the pledgee upon demand all reasonable sums which the pledgee may expend or incur in enforcing, collecting, conserving or protecting any collateral and all such sums shall be secured by this pledge. It is further agreed that the pledgee may extend or consent to the extension of the time of payment or maturity of any collateral. The undersigned hereby waives presentment, demand, protest, notice of protest, and notice of non-acceptance or non-payment with respect to any indebtedness, obligation or liability secured hereby.

The pledgee is authorized to transfer to itself or to any other person all or any of said collateral, and may fill in all blanks in any transfers of collateral, power of attorney, or other documents delivered to it. Upon request, the undersigned will execute all such instruments as may be reasonably

required to carry out the provisions of this agreement. The obligation of the undersigned hereunder shall not be affected by the release or substitution of any collateral nor by the release of or any renewals or extensions of time to, any party to any instrument, obligation or liability secured hereby or to which the undersigned is a party; nor shall the pledgee be bound to resort to or exhaust its recourse nor to take any action against any other parties.

The pledgee may assign or transfer the whole or any part of the indebtedness, obligation or liability of the undersigned and may transfer therewith as collateral security the whole or any part of the collateral herein mentioned; and all obligations, rights, powers and privileges herein named shall inure to the benefit of the assignee and shall bind the heirs, executors, administrators, successors or assigns of the parties hereto, as the case may be.

Dated at Seattle, Washington, the 7th day of July, 1934.

W. L. COMYN & SONS.
By W. LESLIE COMYN.

Witness:
R. A. KENDALL.

State of Washington,
County of King—ss.

W. Leslie Comyn being first duly sworn on oath deposes and says:

That he is President of W. L. Comyn & Sons, the party having executed the above pledge agreement; that he executed the same on behalf of said W. L. Comyn & Sons, being thereunto duly authorized, for the uses and purposes therein mentioned.

W. LESLIE COMYN. [119]

Subscribed and sworn to before me this 7th day of July, 1934.

[Seal] ARTHUR BRATSETT,
Notary Public in and for the State of Washington, residing at Seattle.

First National Bank of Seattle acknowledges receipt of triplicate original of this agreement and agrees that it will make no further advances against the collateral herein described without the consent in writing first obtained of John S. Robinson or Glenn J. Fairbrook, attorneys for Signal Oil and Gas Company, a Delaware corporation.

FIRST NATIONAL BANK OF SEATTLE,
By P. B. TRUAX,
V. P.

(July 7th, 1934.) [120]

EXHIBIT T-2

CREDITORS' AGREEMENT

This is an agreement between W. L. Comyn & Sons, a Washington corporation, herein called "the company", and the undersigned creditors thereof.

The company is engaged in business of ship operators and has become indebted to the undersigned creditors in the amount set opposite their respective names, (exclusive of indebtedness to banks, which is secured by certain collateral and also exclusive of a claim of the United States Government in the sum of $3189.90).

The company owing to the strike on the Pacific Coast has suffered severe losses, but has many vessels under charter and valuable operating agreements with foreign owners, and has valuable contracts for the freighting of cargo, which will inure to the financial benefit of the company and its creditors if the company can proceed in an orderly way with its functions and the liquidation of its indebtedness. It is therefore deemed advisable by the undersigned creditors that payment of their obligations be extended until September 1, 1935.

Now, therefore, in consideration of One and no 100 ($1.00) Dollar and other good and valuable consideration, the receipt whereof is hereby acknowledged, of one to the other, and the execution of this agreement by each of the undersigned creditors of the company, it is agreed:

The company may pay all creditors in full whose claims do not exceed the sum of $100.00, from any moneys available to the company.

The undersigned creditors, and each of them, agree that they will not enforce by legal proceedings or otherwise, directly or indirectly, the obligations of the company to the undersigned creditors until after September 1, 1935, and further agree that they will not sell, assign or transfer any obligation of the company held by them until after that date.

In order to enable the company to obtain bank credit, the undersigned creditors, and each of them, agree to subordinate the claims herein mentioned to any indebtedness incurred subsequent to the date of this agreement.

Any creditor may sign a copy of this agreement with like effect as though the signature had been appended to the original. Unless the agreement is signed by all creditors listed below, no one creditor signing shall be bound thereby.

Dated at Seattle this 10th day of August, 1934.

W. L. COMYN & SONS,
By W. LESLIE COMYN.

This agreement is signed by Signal Oil and Gas Company with the understanding that nothing therein contained shall constitute any release or waiver of any lien or the right to a lien which Signal Oil and Gas Company, a Delaware corporation, has or may have on or against any vessels

for supplies furnished said vessels, or any of them, while said vessels, or any of them, were [121] entrusted to the management of the debtor named in said agreement, provided, however, that Signal Oil and Gas Company agrees not to enforce such liens against any of said vessels for the period this agreement is in effect unless and excepting enforcement is necessary to prevent the loss of said lien rights by destruction, sale or other disposition of said vessels, or any of them.

[Seal] SIGNAL OIL AND GAS COMPANY.
By H. J. MARCH,
Sect. [122]

EXHIBIT U-2

W. L. Comyn & Sons
Freight Contractors
General Commission Merchants
Steamship Agents and Brokers
427 Colman Bldg.
Seattle, Wash.

April 3, 1935.

Messrs. Signal Oil & Gas Company,
Signal Oil Building,
Los Angeles, California.

Dear Sirs:

Referring to our letter under date of August 24th, 1934, and the creditors' agreement signed by

you, we deeply regret to now have to report to you that, after eight months' strenuous effort, we have been quite unable to obtain the necessary funds to continue the Cascade Line, Inc., in its regular service to Europe.

Neither have we been able to obtain suitable ships for the Cascade Line on berth basis from foreign owners owing to the advance in the cost of loading on the Pacific Coast since the strike to the extent of over 40% and by the added cost of fuel since the first of the year amounting to approximately 35%, making operation of vessels both in the Line and on freight contracts entirely unprofitable on the basis of present Conference rates on liner business and on present freight rates on contract business.

During the past eight months, owing to these additional costs, we have been unable to make any profits and have now exhausted our financial resources and the only asset left to this company is the stock of the Cascade Line in which, as previously advised you, we have invested approximately $75,000.00 and which, for the reasons stated above, is now valueless.

When we addressed our letter to you on August 24th, 1934, we had reason to believe that financial assistance would be forthcoming from our bankers, whom we have paid off in full, but the labor conditions now existent on the coast are and have been of such a nature that, after an executive committee

meeting, they decided that they were unwarranted in granting us the necessary accommodation.

This company owes general claims approximating $94,000.00. Its assets now consist of office furniture, on which the landlord has a lien for unpaid rent, and doubtful accounts receivable amounting to approximately $1500.00.

The Pacific Freighters Limited, of Vancouver, B. C., in which we had a 50% interest, has, unfortunately, met with severe reverses owing to the existing conditions and has had to be wound up, so that any possible equity in the above assets would, we fear, be absorbed by wages and the Treasury claim entitled to priority.

Any legal liquidation of the company would, therefore, seem to be useless. [123]

In view of the above conditions and the hopeless outlook for obtaining the necessary capital or operating at a profit, we are forced to discontinue the operation of the business and therefore desire to release you from the creditors' agreement.

Yours very truly,

W. L. COMYN & SONS,

By W. LESLIE COMYN,

President. [124]

EXHIBIT V-2

M.S. Stjerneborg
Grays Harbor, May 23rd, 1934

Messrs. W. L. Comyn & Sons
427 Colman Blvd.
Seattle, Wash.

Have received your letter of May 22nd regarding the quantity of oil on board. I hereby beg to inform you that upon docking at Astoria there was on board 91 tons of oil.

Yours very truly,
M. ROSENHOJ [125]

EXHIBIT W-2

M.S. Stjerneborg
Grays Harbour d. 17' Maj 1935.

Uddrag af M.S. Stjerneborg's Maskindagbog Astoria, Ore. Tirsdag den 15' Maj 1934. Kl. 12,10 begyndt at fylde Br-Oile.

Modtaget fra Standard Oil Co. 3644 barrels—501 tons Braendselsolie.

Vaegtf. o,88. Flammep. P.M. 182 Gr. F.

Braendselsolien fyldt i No. 1-2-3 Bundtanke.

Onsdag den 16' Maj 1934.

Kl. 1,00 faerdig med Oliefyldning.

EMIL CARLSEN
1' Maskinmester.

Translation

ABSTRACT OF ENGINE-ROOM LOG-BOOK
M/S "STJERNEBORG"

Astoria, Ore., Tuesday, May 15th, 1934

12:10 a.m. commence filling oil. (dizel)

Received from "Standard Oil Co." 3644 barrels —501 ton dizel-oil.

Gravity 0,88, point of ignition 182 F.

Wednesday, May 16th, 1934

1:00 a.m. oil filling complete.

I hereby certify that above statement is correct and true.

M. ROSENHOJ,
Master.

AAGE HANSEN,
1st Officer. [126]

EXHIBIT X-2

Translation

ABSTRACT OF ENGINE-ROOM LOG-BOOK
M/S "STJERNEBORG"

Astoria, Ore., Tuesday, May 15th, 1934

Fuel-oil on board at 12:00 (noon) 91 tons.

12:10 p.m. commence filling oil (Diesel).

Received from Standard Oil Co. 3644 barrels—501 tons diezel-oil.

Gravity 0,88. Point of ignition 182 F.

Wednesday, May 16th, 1934

1:00 a.m. oil filling complete.

Sydney, Australia, August 15th, 1934

Fuel-oil on board measured by Surveyor, 402 tons.

Engines ready at 12:00 noon.

At 15.25 beginning maneuvers to 15.52 full speed; departure Sydney.

I hereby certify that above statement is correct and true.

(Signed) M. ROSENHOJ,
Master.

(Signed) AAGE HANSEN
1st Officer. [127]

EXHIBIT Y-2

CERTIFICATE OF RE-DELIVERY

This Is to Certify that the Motor Vessel "Stjerneborg" was re-delivered to the Owners on the fifteenth (15th) day of August, One thousand nine hundred and thirty-four (1934) at Two (2) o'clock P. M. at the port of Sydney, N.S.W., with Four Hundred and Two (402) tons of oil remaining in bunkers as per attached statement. 2918.52 barrels.

M. ROSENHOJ,
Master, M.S. "Stjerneborg".

P. H. SMITH,
COMYN, SMITH & COMPANY
Agents for
W. L. COMYN & SONS,
Time charterers.

Sydney, N.S.W.
15/8/'34

[Endorsed]: Stipulation of Facts. Filed May 9, 1938. [128]

[Title of District Court and Cause—Consolidated.]

MEMORANDUM DECISION

Filed Dec. 7, 1938

John S. Robinson, Central Bldg., Seattle, Wash., and Fairbrook & Williams, Central Bldg., Seattle, Wash.,

Proctors for Libelant in both causes.

Hayden, Merritt, Summers & Bucey, Central Bldg., Seattle,

Proctors for Claimants in both causes.

These two causes have been submitted upon a stipulation of facts. The libel in cause No. 7331 was filed May 11, 1935. In cause No. 7334 the libel was [133] filed June 5th, 1935. In each case the respondent vessel was libeled for fuel oil supplied by libelant.

In the case of the "Brand" the oil was furnished in April and May, 1934. In the case of the "Stjerneborg", in May, 1934.

The Claimant-owner in each case, by Answer, denies that the oil was either furnished upon the credit of the vessel or upon the order of the owner or one authorized by the owner and alleges that it was furnished upon the order and personal credit of the charterer known by libelant to be such under a charter party which provided, in effect, that the charterer should pay for all coal, oil and other fuel.

Libelant cites: 46 U. S. C. A., Sec. 971, et seq.; The South Coast, 251 U. S. 519, 64 L. Ed. 386; The Golden Gate, 52 Fed. (2d) 397; The Luddeo 41, 66 Fed. (2d) 997; The Palnatoka, 1934 A. M. C. 936; The Everosa, 93 Fed. (2d) 732; Lower Coast Transp. Co. v. Gulf Refining Co., 211 Fed. 336; The Commack, 299 Fed. 229; Ramsay v. Alegre, 25 U. S. 395; Paynoux v. Howard, 32 U. S. 506; The Kimball, 70 U. S. 37; The Emily Sanders, 84 U. S. 666; The Donna Lane, 1933 A. M. C. 470; The President Arthur, 1934 A. M. C. 1179, 73 L. Ed. 846; El Amigo, 285 Fed. 868; The Steamer St. Lawrence, 17 L. Ed. 180; The Alabama, 22 Fed. 449; The Queen of St. Johns, 31 Fed. 24; The Henry S, 42 Fed. Supp. 953; The Eastern Short, 24 Fed. (2d) 443; Kalorama, 10 Wall. 204; The Grand Republic, 138 Fed. 615, affirmed, 144 Fed. 1022; Marsodok, 94 Fed. (2d) 339; In re Marine Transit, 94 Fed. (2d) 414; The Portland, 273 Fed. 401; The South Coast, 253 Fed. 327; Knutsen v. Associated [134] Oil Co., 284 U. S. 682; 76 L. Ed. 576; The President Arthur, 72 Fed. (2d) 276; The Astorian, 57 Fed. (2d) 85; The Robin Goodfellow, 26 Fed. (2d) 343; The Eastern, 257 Fed. 874; The City of Seattle, 1932 A. M. C. 1531; The Charles R. Way, 265 Fed. 422; The J. W. Hennessey, 57 Fed. (2d) 77, 38 C. J. 1241; The Bronx, 246 Fed. 809; Restatement of the Law, "Conflict of Laws", Chapter 1, section 2, page 5; 38 C. J. 1243; 38 C. J. 1244; In re Marine Transit Corp., 20 Fed. Suppl. 414; Rem. Rev. Stat. Sec. 1182; Fairbanks-Morse Co. v. Union Bank & Trust

Co., 55 Wash. 538; 104 Pac. 815; Oregon Code Ann. 51-617; Code of Civil Proc. (California), Sec. 813.

Respondents cite: 46 U. S. C. A., Sec. 975; June 5, 1920, C. 250, Sec. 30, subsec. T, 41 Stat. 1006; The Maritime Lien Act of 1910; Piedmont, etc. Coal Co. vs. Seaboard Fisheries Co., 65 L. Ed. 97; The President Arthur, 73 L. Ed. 846; Taylor vs. The Commonwealth, Fed. Cases No. 13,787; The President Arthur, 72 Fed. (2d) 276; The City of Seattle, 61 Fed. (2d) 763 (cited as 51 Fed. (2d) 763); The Defiance, 3 Fed. (2d) 48; Page on "Contracts", 2nd Edition, Sec. 3571, p. 6171, Sec. 2048, p. 3543; 12 C. J. 451; 43 C. J. 251, 247, 248; 6 R. C. L. Sec. 243, p. 855; Carver on Carriage of Goods by Sea, 8th Ed. Sec. 210, p. 315; 13 C. J. 423; London Assurance v. Companhia de Moagens, etc., 167 U. S. 149, 162; 42 L. Ed. 113, 121; Liverpool, etc. v. Phoenix Ins. Co., 129 U. S. 397, 462; 32 L. Ed. 788, 799; Boseman v. Connecticut General Life Insurance Co., 301 U. S. 196, 81 L. Ed. 1036; Pritchard v. Norton, 106 U. S. 124; 27 L. Ed. 104, 106, 108; Olympia Canning Co. v. Union Marine Ins. Co., 10 Fed. (2d) 72; U. S. Alaska Pack. Co. v. Luketa, 58 Fed. (2d) 944; The Orammore, 24 Fed. 922, 927, affirmed [135] 92 Fed. 396; Liberty etc. Company v. New England Inv. Shares, 25 Fed. (2d) 493, 495; The Helen L. 1937 A. M. C. 1170; The Bellingham, 1927 A. M. C. 11; 46 U. S. C. A., Sec. 975; The Hammond, 30 Fed. (2d) 890; The Mona, 282 Fed. 468; Pensacola Shipping Co. vs. U. S. Shipping Board, E. F. Corp., 277 Fed. 889; The Cratheus,

263 Fed. 693; The Western Wave, 2 Fed. Supp. 886; The Pjala, 7 Fed. Sup. 618; The Kate, 41 L. Ed. 512; The Thordis, 290 Fed. 255; The Dictator, 18 Fed. (2d) 131; The Henry W. Breyer, 17 Fed. (2d) 423; The Millinocket, 266 Fed. 392; The Western Wave, 77 Fed. (2d) 695; The Roseway, 34 Fed. (2d) 131; The Morganza and the Mossabee, 17 Fed. (2d) 946; Frye & Sons vs. U. S., 1 Fed. (2d) 963; Morse Drydock & Repair Co. vs. U. S., 1 Fed. (2d) 233; The Ascutney, 289 Fed. 802; The Aljohn, 7 Fed. Supp. 788; U. S. v. Certain Subfreights, 300 Fed. 981; The West Haven, 297 Fed. 523; The El Amigo, 284 Fed. 868; The J. W. Hennesey, 57 Fed. (2d) 77; The Marsodock, 94 Fed. (2d) 339; The Portland, 273 Fed. 401; The Golden Gate, 52 Fed. (2d) 397; The Luddeo No. 41, 66 Fed. (2d) 977; The Anna E. Morse, 285 Fed. 794; The Augusta W. Snow, 46 Fed. (2d) 992; The Murray vs. Lazarus, Fed. Cases No. 9,962; Phelps vs. The Camilla, Fed. Cases No. 11,073; The Anna C. Pratt, Fed. Cases No. 409, affirmed in 15 L. Ed. 267; Taylor vs. The Commonwealth, Fed. Cases No. 13,787; The Astorian, 57 Fed. (2d) 85; The Robin Goodfellow, 26 Fed. (2d) 343; The Huron, 278 Fed. 383.

Cushman, District Judge:

The stipulated facts show that the oil was furnished upon the credit of the vessels and that, in consequence, the asserted liens were created. [136]

The South Coast, 251 U. S. 519; Piedmont Coal

Co. v. Seaboard Fisheries Co., 254 U. S. 1-10; citing with approval, The Bronx, 246 Fed. 809; The Golden Gate, 52 Fed. (2d) 397, certiorari denied, Knutsen v. Associated Oil Co., 284 U. S. 682; The Luddoc, 41, 66 Fed. (2d) 997; The Portland, 273 Fed. 401; The Astorian, 57 Fed. (2d) 85-89 et seq. See also The Everosa, 93 Fed. (2d) 732; The Palnatoke, 1934 A. M. C. 936.

An alternative defense asserted in each case is that the acceptance, in July, 1934, by libelant from charterer of a pledge of certain collateral to secure payment for the oil furnished and the release by libelant of the excess realized therefrom after satisfaction of the senior claim of libelant's co-pledgee constituted a waiver, if it existed, of the asserted lien. The pledge agreement provided:

> "Nothing herein contained shall preclude the pledgee from collecting on any indebtedness or obligation hereby secured without resorting to said collateral. Nothing herein contained shall constitute any release or waiver of any lien which Signal Oil and Gas Company, a Delaware corporation, may have on or against the vessels hereinabove described for fuel oil supplied to such vessels.".

No interest in the pledged collateral upon the part of claimants or respondents is shown. No intervening rights are involved. The owners are not shown to have relied upon this pledge or to have known of it. This transaction did not constitute a waiver.

A further alternative defense asserted is that libelant, by agreeing in August, 1934, not to enforce prior to September 1st, 1935, payment for the oil by charterer (from which agreement libelant was by charterer released in April, 1935) waived any lien which might exist. [137]

This agreement provided:

> "This agreement is signed by Signal Oil and Gas Company with the understanding that nothing therein contained shall constitute any release or waiver of any lien or the right to a lien which Signal Oil and Gas Company, a Delaware corporation, has or may have on or against any vessels for supplies furnished said vessels, or any of them, while said vessels, or any of them, were entrusted to the management of the debtor named in said agreement; provided, however, that Signal Oil and Gas Company agrees not to enforce such liens against any of said vessels for the period this agreement is in effect unless and excepting enforcement is necessary to prevent the loss of said lien rights by destruction, sale or other disposition of said vessels, or any of them."

No intention upon Libelant's part to waive its lien is shown by this transaction nor did it amount to laches.

In the case of the Stjerneborg, No. 7331, a further alternative defense or partial defense has been interposed, Claimant alleging.

"A-II

That the diesel oil so furnished on or about May 14, 1934, at the port of Astoria, state of Oregon, by libelant to said motorship was not a lienable necessary since, when ordered and received, it was not essential to the voyage then contemplated by said motorship, but was desired by the charterer merely to comply with its obligations under said charter party."

In this matter the facts stipulated are as follows:

* * * * * * * *

"(9) That under said contract libelant caused to be delivered to the vessel "Stjerneborg", on the order of W. L. Comyn & Sons, a quantity of fuel oil at Astoria, Oregon, on or about the 15th day of May, 1934; that this quantity of oil was ordered by W. L. Comyn & Sons in letter dated May 1, 1934, reciting that 'the M/S Stjerneborg which is at present on our time charter will be loading a cargo of lumber *to China and Japan* about the middle of May at Grays Harbor', and requesting delivery of oil at Aberdeen (Copy-Ex. H-2); that to this letter libelant replied by telegram, dated May 7, 1934, suggesting oil delivery at Astoria (Copy-Ex. I-2); that by letter of May 7, 1934, W. L. Comyn & Sons acquiesced in libelant's suggestion for oil delivery at Astoria (Copy-Ex. J-2); that W. L. Comyn & Sons notified

libelant of the arrival of the vessel at Astoria by telegram [138] dated May 14, 1934 (Copy-Ex. K-2); that by letter dated May 14, 1934, libelant acknowledged advice from W. L. Comyn & Sons as to the arrival of the vessel at Astoria for oil (Copy-Ex. L-2); that on May 15, 1934, delivery receipt was signed by the chief engineer and the master of the vessel (Photostatic copy-Ex. M-2), and later libelant issued its invoice for $3824.65, addressed to 'MS Stjerneborg and Owners, c/o W. L. Comyn & Sons, 427 Colman Bldg., Seattle, Washington' (Copy-Ex. N-2).

That said delivery as evidenced by said delivery receipt (Ex. M-2) and by said invoice (Ex. N-2) in the sum of $3824.65, constitute the claim in suit, upon which libelant seeks recovery against the respondent vessel 'Stjerneborg'.

* * * * * * *

That said 'Stjerneborg' charter party also contained the following clause:

"13. Quantity of bunkers on delivery as on board. Bunkers on redelivery not less than 400 tons."

* * * * * * *

(11) That as a result of a strike of longshoremen, effective in most ports of the Pacific Coast, few vessels loaded or discharged cargo, and few vessels moved in commerce from the middle of May, 1934, to the end of July, 1934;

that partly in consequence of this condition, W. L. Comyn & Sons became financially embarrassed, and gradually delayed from time to time in making payments to libelant for oil bought under said contract.

* * * * * * * *

(16) That the quantity of oil on board the vessel 'Stjerneborg' at the time of arrival at Astoria, Oregon, on May 15, 1934, prior to receiving oil then and there from libelant, was 91 tons, as shown by statement of the master dated May 23, 1934 (Copy-Ex. V-2).

That the quantity of oil received by the vessel 'Stjerneborg' then and there was 501 tons, as shown by abstract of log, certified by the master and first officer (Copy-Ex. W-2).

That on or about July 5, 1934, at Vancouver, B. C., the vessel 'Stjerneborg' received 69.82 tons of oil—such quantity, however, not being supplied by or for libelant.

That the quantity of oil remaining on board the vessel 'Stjerneborg' on August 15, 1934, upon her redelivery under the then current charter party by W. L. Comyn & Sons as chartered to the owner at *Sydney, Australia*, was 402 tons, as [139] shown by statement signed by the master and first officer of the vessel (Copy-Ex. X-2) and as shown by certificate of redelivery signed by the master and Comyn, Smith & Company, Agents for W. L. Comyn &

Sons at Sydney (Copy-Ex. Y-2)." (Emphasis, the Court's).

The foregoing fails to show that the oil furnished by libelant was other than necessary to the voyage then contemplated.

The Decree, in each case, will be for Libelant with interest and costs, which decree, together with any orders based upon the foregoing rulings, will be settled upon notice.

The Clerk is directed to notify the proctors for the parties of the filing of this decision.

[Endorsed]: Filed Dec. 7, 1938. [140]

[Title of District Court and Cause—No. 7331.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

The above entitled cause came on regularly for trial before the Court upon Stipulation of Facts and exhibits attached thereto, duly agreed to by libelant and claimant, libelant appearing by Glenn J. Fairbrook, proctor for libelant, claimant appearing by Lane Summers of Hayden, Merritt, Summers & Bucey, proctors for claimant, and the Court having considered said Stipulation of Facts and argument of proctors for libelant and for claimant, does now adopt said Stipulation of Facts and exhibits thereto as its Findings of Fact herein.

Done at Tacoma, Washington, this 7th day of March, 1939.

EDWARD E. CUSHMAN,
Judge.

From the Stipulation of Facts and exhibits herein, which the Court has adopted as its Findings of Fact, the Court makes the following

CONCLUSIONS OF LAW:

I.

That fuel oil of the value of Three Thousand, Eight Hundred Twenty-Four Dollars and Sixty-Five Cents ($3,824.65) furnished by libelant to the vessel "Stjerneborg" on May 15th, 1934, was furnished [141] upon the credit of said vessel and that a maritime lien was created therefor.

II.

That said fuel oil was necessary for the voyage of said vessel then contemplated.

III.

That libelant has not waived its maritime lien therefor.

IV.

That decree should be entered for libelant against said vessel, claimant and its stipulators for costs and value, for $3,824.65, together with interest and costs.

Done at Tacoma, Washington, this 7th day of March, 1939.

EDWARD E. CUSHMAN,
Judge.

Presented by:
GLENN J. FAIRBROOK,
660 Central Building,
Seattle, Washington.

[Endorsed]: Filed Mar. 7, 1939. [142]

[Title of District Court and Cause—No. 7334.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

The above entitled cause came on regularly for trial before the Court upon Stipulation of Facts and exhibits attached thereto, duly agreed to by libelant and claimant, libelant appearing by Glenn J. Fairbrook, proctor for libelant, claimant appearing by Lane Summers of Hayden, Merrit, Summers & Bucey, proctors for claimant, and the Court having considered said Stipulation of Facts and argument of proctors for libelant and for claimant, does now adopt said Stipulation of Facts and exhibits thereto as its Findings of Fact herein.

Done at Tacoma, Washington, this 7th day of March, 1939.

EDWARD E. CUSHMAN,
Judge.

From the Stipulation of Facts and exhibits herein, which the Court has adopted as its Findings of Fact, the Court makes the following

CONCLUSIONS OF LAW

I.

That fuel oil of the value of Six Hundred Thirty-Eight Dollars [143] and Fifty-Seven Cents ($638.57) furnished by libelant to the vessel "Brand" on April 26th, 1934, and fuel oil of the value of Three Thousand, Nine Hundred Ninety-Three Dollars and Fourteen Cents ($3,993.14) furnished by libelant to the vessel "Brand" on May 11th, 1934, was furnished upon the credit of said vessel and that a maritime lien was created therefor.

II.

That said fuel oil was necessary for the voyage of said vessel then contemplated.

III.

That libelant has not waived its maritime lien therefor.

IV.

That decree should be entered for libelant against said vessel, claimant and its stipulators for costs and value, for $4,631.71, together with interest and costs.

Done at Tacoma, Washington, this 7th day of March, 1939.

EDWARD E. CUSHMAN,
Judge.

Presented by:
GLENN J. FAIRBROOK,
660 Central Building,
Seattle, Washington.

[Endorsed]: Filed Mar. 7, 1939. [144]

[Title of District Court and Cause—No. 7331.]

CLAIMANT'S EXCEPTIONS TO COURT'S CONCLUSIONS OF LAW

The exceptions of claimant above named to the Court's Findings of Fact (denominated "Conclusions of Law"), are as follows:

(1) Claimant excepts to the Court's Conclusion of Law No. 1, to the effect that fuel oil was furnished to the respondent vessel upon its credit, and that a maritime lien was created therefor, upon the ground and for the reason that such conclusion is not warranted or justified by the agreed facts, and that such agreed facts require the contrary conclusion, viz. that the fuel oil was not furnished upon the credit of the vessel but upon the individual credit of the charterer of the vessel, and that hence no maritime lien was created.

(2) Claimant excepts to the Court's Conclusion of Law No. 2 to the effect that fuel oil supplied was

necessary for the contemplated voyage of the respondent vessel, because such conclusion is not warranted or justified by the facts as stipulated.

(3) Claimant excepts to the Court's Conclusion of Law No. 3 to the effect that libelant did not waive the maritime lien, upon the ground and for the reason that such conclusion is [145] not warranted or justified by the facts as stipulated.

(4) Claimant excepts to the Court's Conclusion of Law No. 4, upon the ground and for the reason that such conclusion is not warranted or justified by the facts as stipulated, and that in view of delay in the prosecution of the above entitled cause, attributable to libelant, claimant should not be charged with interest.

HAYDEN, MERRITT,
SUMMERS & BUCEY,
Proctors for Claimant.

The foregoing exceptions are hereby allowed this 7th day of March, 1939.

EDWARD E. CUSHMAN,
U. S. District Judge.

[Endorsed]: Filed Mar. 7, 1939. [146]

[Title of District Court and Cause—No. 7334.]

CLAIMANT'S EXCEPTIONS TO COURT'S CONCLUSIONS OF LAW.

The exceptions of claimant above named to the Court's Findings of Fact (denominated "Conclusions of Law"), are as follows:

(1) Claimant excepts to the Court's Conclusion of Law No. 1, to the effect that fuel oil was furnished to the respondent vessel upon its credit, and that a maritime lien was created therefor, upon the ground and for the reason that such conclusion is not warranted or justified by the agreed facts, and that such agreed facts require the contrary conclusion, viz. that the fuel oil was not furnished upon the credit of the vessel but upon the individual credit of the charterer of the vessel, and that hence no maritime lien was created.

(2) Claimant excepts to the Court's Conclusion of Law No. 2 to the effect that fuel oil supplied was necessary for the contemplated voyage of the respondent vessel, because such conclusion is not warranted or justified by the facts as stipulated.

(3) Claimant excepts to the Court's Conclusion of Law No. 3 to the effect that libelant did not waive the maritime [147] lien, upon the ground and for the reason that such conclusion is not warranted or justified by the facts as stipulated.

(4) Claimant excepts to the Court's Conclusion of Law No. 4, upon the ground and for the reason that such conclusion is not warranted or justified by the facts as stipulated, and that in view of delay in the prosecution of the above entitled cause, attributable to libelant, claimant should not be charged with interest.

HAYDEN, MERRITT,
SUMMERS & BUCEY,
Proctors for Claimant.

The foregoing exceptions are hereby allowed this 7th day of March, 1939.

EDWARD E. CUSHMAN,
U. S. District Judge.

[Endorsed]: Filed Mar. 7, 1939. [148]

United States District Court, Western District of Washington, Southern Division.

In Admiralty

No. 7331

SIGNAL OIL AND GAS COMPANY OF CALIFORNIA, a corporation,

Libelant,

vs.

Motorship "STJERNEBORG",

Respondent,

DAMPSKIBSSELSKABET DANNEBROG, a corporation,

Claimant.

DECREE

This matter having come on regularly before the Court for trial upon a Stipulation of Facts agreed to in writing by the proctors for libelant and by proctors for claimant, the Court having heretofore on the 7th day of December, 1938, rendered its memorandum decision herein, and having made and entered Findings of Fact and Conclusions of Law, and being fully advised in the premises,

It Is Adjudged and Decreed that libelant has a maritime lien on the Motorship "Stjerneborg" in the amount of Three Thousand Eight Hundred Twenty-Four Dollars and Sixty-Five Cents ($3,824.65) with interest and costs.

It Is Further Ordered, Adjudged and Decreed that libelant receive and recover from the vessel "Stjerneborg", her tackle, apparel and furniture, and from Dampskibsselskabet Dannebrog, a corporation, claimant, the sum of Three Thousand, Eight Hundred Twenty-Four Dollars and Sixty-Five Cents ($3,824.65), with interest thereon from the 11th day of May, 1935, amounting to Eight Hundred Seventy-Three Dollars and Fifty-Four Cents ($873.54), together with the libelant's costs taxed in the sum of Ninety- [149] Five Dollars ($95.00), and amounting in all to the sum of Four Thousand, Seven Hundred Ninety-Three Dollars and Nineteen Cents ($4,793.19), with interest thereon until paid, and that libelant have execution therefor.

It Is Further Ordered, Adjudged and Decreed that unless this decree be satisfied or an appeal be taken within twenty (20) days after service of a copy of this decree with notice of entry upon the claimant or its proctors, claimant's stipulators for costs and value, National Surety Corporation, cause their engagements to be performed or show cause within four (4) days after the expiration of said twenty (20) days, or on the first day of jurisdiction thereafter, why execution should not issue against

them, their goods, chattels and lands, to satisfy this decree.

Done at Tacoma, Washington, this 7th day of March, 1939.

EDWARD E. CUSHMAN,
District Judge.

Presented by:
GLENN J. FAIRBROOK,
660 Central Building,
Seattle, Washington.

[Endorsed]: Filed Mar. 7, 1939. [150]

United States District Court, Western District of Washington, Southern Division.

In Admiralty

No. 7334

SIGNAL OIL AND GAS COMPANY OF CALIFORNIA, a corporation,

Libelant,

vs.

Motorship "BRAND",

Respondent,

AKTIESELSKABET BORGESTAD, a corporation,

Claimant.

DECREE

This matter having come on regularly before the Court for trial upon a Stipulation of Facts agreed

to in writing by the proctors for libelant and by proctors for claimant, the Court having heretofore on the 7th day of December, 1938, rendered its memorandum decision herein and having made and entered Findings of Fact and Conclusions of Law, and being fully advised in the premises,

It Is Adjudged and Decreed that libelant has a maritime lien on the motorship "Brand" in the amount of Four Thousand Six Hundred Thirty-One Dollars and Seventy-One Cents ($4,631.71) with interest and costs.

It Is Further Ordered, Adjudged and Decreed that libelant receive and recover from the vessel "Brand", her tackle, apparel and furniture, and from Aktieselskabet Borgestad, a corporation, claimant, the sum of Four Thousand, Six Hundred Thirty-One Dollars and Seventy-One Cents ($4,631.71), with interest thereon from the 5th day of June, 1935, amounting to One Thousand Thirty-Eight Dollars and Eighty-Three Cents ($1,038.83), together with the libelant's costs taxed in the sum of Eighty-Five Dollars ($85.00), [151] and amounting in all to the sum of Five Thousand, Seven Hundred Fifty-Five Dollars and Fifty-Four Cents ($5,755.54), with interest thereon until paid, and that libelant have execution therefor.

It Is Further Ordered, Adjudged and Decreed that unless this decree be satisfied or an appeal be taken within twenty (20) days after service of a copy of this decree with notice of entry upon the claimant or its proctors, claimant's stipulators for

costs and value, Pacific Indemnity Company, cause their engagements to be performed or show cause within four (4) days after the expiration of said twenty (20) days, or on the first day of jurisdiction thereafter, why execution should not issue against them, their goods, chattels and lands, to satisfy this decree.

Done at Tacoma, Washington, this 7th day of March, 1939.

EDWARD E. CUSHMAN,
District Judge.

Presented by:
GLENN J. FAIRBROOK,
660 Central Building,
Seattle, Washington.

[Endorsed]: Filed Mar. 7, 1939. [152]

[Title of District Court and Cause—No. 7331.]

CLAIMANT'S EXCEPTIONS TO THE COURT'S DECREE

The exceptions of claimant above named to the Court's decree in the above entitled cause show:

(1) That claimant excepts to that portion of the decree reciting that libelant has a maritime lien against the respondent vessel, upon the ground and for the reason that the same is not warranted or justified by the stipulation of facts in the above entitled cause.

(2) Claimant excepts to that portion of the decree rendering judgment against the respondent vessel and the claimant thereof, upon the ground and for the reason that the same is not warranted or justified by the stipulation of facts in the above entitled cause.

(3) Claimant excepts to that portion of the decree which allows judgment in favor of libelant for interest, upon the ground and for the reason that the delay in the prosecution of the above entitled action, attributable to libelant, does not [153] justify the exercise of the court's discretion in such allowance.

HAYDEN, MERRITT,
SUMMERS & BUCEY,
Proctors for Claimant.

The foregoing exceptions are hereby allowed this 7th day of March, 1939.

EDWARD E. CUSHMAN,
U. S. District Judge.

[Endorsed]: Filed Mar. 7, 1939. [154]

[Title of District Court and Cause—No. 7334.]

CLAIMANT'S EXCEPTIONS TO THE COURT'S DECREE

The exceptions of claimant above named to the Court's decree in the above entitled cause show:

(1) That claimant excepts to that portion of the decree reciting that libelant has a maritime lien

against the respondent vessel, upon the ground and for the reason that the same is not warranted or justified by the stipulation of facts in the above entitled cause.

(2) Claimant excepts to that portion of the decree rendering judgment against the respondent vessel and the claimant thereof, upon the ground and for the reason that the same is not warranted or justified by the stipulation of facts in the above entitled cause.

(3) Claimant excepts to that portion of the decree which allows judgment in favor of libelant for interest, upon the ground and for the reason that the delay in the prosecution of the above entitled action, attributable to libelant, does not [155] justify the exercise of the court's discretion in such allowance.

HAYDEN, MERRITT, SUMMERS & BUCEY,

Proctors for claimant.

The foregoing exceptions are hereby allowed this 7th day of March, 1939.

EDWARD E. CUSHMAN,

U. S. District Judge.

[Endorsed]: Filed Mar. 7, 1939. [156]

[Title of District Court and Cause—No. 7331.]

MEMORANDUM OF COSTS AND DISBURSEMENTS

Disbursements

	Amount Claimed	Amount Allowed
Clerk's fees	$10.00	
Marshal's fees	25.00	
Attorney's fees	20.00	
Commissioner's fees		
Master in Chancery's fees		
Reporter's fees		
Miscellaneous fees		
Bond premium 1935, 1936, 1937 and 1938—4 years at $10.00	40.00	
Witness fees (Give name, address, number days of attendance, and mileage)		
Taxed	$95.00	

Taxed 193

Clerk. [157]

United States of America,
Western District of Washington—ss.

Glenn J. Fairbrook, being duly sworn, deposes and says: That he is one of the Proctors for the Libelant in the above-entitled cause; and as such has knowledge of the facts herein set forth; that the items in the above memorandum contained are correct to the best of this deponent's knowledge and belief, and that the said disbursements have been necessarily incurred in the said cause and that the services charged herein have been actually and necessarily performed as herein stated.

GLENN J. FAIRBROOK

Subscribed and sworn to before me this 30th day of January, 1939.

[Seal] D. T. CHILD

To Hayden, Merritt, Summers & Bucey, Proctors for Claimant.

You will please take notice that on Monday the twenty-seventh day of February, 1939, at the hour of ten o'clock A. M., application will be made to the Clerk of said Court, to have the within memorandum of costs and disbursements taxed pursuant to the rule of said Court, in such case made and provided.

FAIRBROOK & WILLIAMS,
Proctors for Libelant.

[Service acknowledged February 16, 1939.]

[Endorsed]: Filed Mar. 2, 1939. [158]

[Title of District Court and Cause.]

MEMORANDUM OF COSTS AND DISBURSEMENTS

	Amt. Claimed	Amt. Allowed
Clerk's fees	$10.00	
Marshal's fees	15.00	
Attorney's fees	20.00	
Commissioner's fees		
Master in Chancery's fees		
Reporter's fees		
Miscellaneous fees		
Bond premium 1935, 1936, 1937 and 1938—4 years at $10.00	40.00	
Witness fees		
Give name, address, number of days of attendance and mileage		
Taxed	$85.00	

Taxed ....., 193

.....

Clerk.

United States of America,
Western District of Washington—ss.

Glenn J. Fairbrook, being duly sworn, deposes and says: That he is one of the Proctors for the Libel-

ant in the above-entitled cause; and as such has knowledge of the facts herein set forth; that the items in the above memorandum contained are correct to the best of this deponent's knowledge and belief, and that the said disbursements have been necessarily incurred in the said cause and that the services charged herein have been actually and necessarily performed as herein stated.

GLENN J. FAIRBROOK

Subscribed and sworn to before me, this 30 day of January, 1939.

[Seal] D. T. CHILD [159]

To Hayden, Merritt, Summers & Bucey, Proctors for Claimant.

You will please take notice that on Monday the twenty-seventh day of February, 1939, at the hour of ten o'clock A. M. application will be made to the Clerk of said Court, to have the within memorandum of costs and disbursements taxed pursuant to the rule of said Court, in such case made and provided.

FAIRBROOK & WILLIAMS,
Proctors for Libelant.

Service of the within and foregoing Memorandum of Costs and Disbursements and notice of the taxation thereof by the receipt of a true copy thereof, hereby is admitted in behalf of all parties entitled

to such service by the Rules of Court, this 16th day of February, 1939.

HAYDEN, MERRITT, SUMMERS & BUCEY (EF)

Proctors for Claimant.

[Endorsed]: Filed Mar. 2, 1939. [160]

[Title of District Court and Cause—No. 7331.]

DOCKET ENTRIES

1935

May 11—Filed Libel.
" Appearance
" Praecipe
" Stipulation for Costs
Issued Monition and Attachment

May 15—Filed Marshal's Return on Monition and Attach.

May 16—Filed Claim of Ownership, by Dampskibsselskabet Danneborg, a corp.
Filed Appearance, Hayden, Merritt, Summers & Bucey, attys. for Claimant
Filed Release Bond ($5,000 Natl. Surety Co.)
Issue Notice of Bonding to U. S. Marshal
Filed Return

Jun. 3—Filed Affidavit of Publication

1936

July 7—Entered order, cause dismissed (Rule 48) Proctors notified

July 9—Entered order, oral motion Libelant, Order of Dismissal vacated

1937

May 14—Filed Answer (and Affirmative Defense)

July 6—Entered order, over Term

1938

Feb 1—Trial April 7; Apr. 6, Filed Stip. to cont. trial

Apr. 6—Entered order trial cont'd to May 9, at 2 P. M.

May 9—Entered record of trial—under advisement
Libelant files Trial Brief
Filed Stipulation of Facts
Respondent 10 days to file Ans. Brief
Libelant 10 days thereafter to file Reply Brief

May 21—Filed and entered Order re submission—Clerk to notify.

Jun. 23—Filed Stipulation re Briefs

Jun. 30— " Brief of Respondents

July 13— " Brief of Libelant

Dec. 7—Filed Memo. Decision (Decree for Libelant, to be settled on notice) (See also 7334)

1939

Mar. 2—Findings and Conclusions and Final Decree submitted to Court
Filed Costs Bill ($95)
Entered Exceptions, Claimant — Written Exceptions may be signed after Findings and Concl. and Decree signed

Mar. 7—Filed and Entered Findings of Fact and Conclusions of Law—Clmt's Exceptions allowed
Filed and Entered Decree, for libelant: $3,824.65, and int. $873.54, and costs, $95; Exceptions allowed

Apr. 4—Filed Petition for Appeal (Claimant) [161]

Apr. 4—Filed Notice of Present. Pet. for Appeal
Filed and entered Order granting Pet. for Appeal
Filed Notice of Appeal
" Stipulation Consolidating Appeal
" Stipulation re Appeal Bond and stay of Execution (release bond heretofore filed to serve in lieu of costs or supersedeas on appeal)
Filed Assignment of Errors

Apr. 5— " Praecipe for Apostles on Appeal
" Statement of Case (addressed to Circuit Court)—transmitted to C.C.A. with appeal record

May 4—To comparing and certifying Record on Appeal ($) [162]

[Title of District Court and Cause—No. 7334.]

DOCKET ENTRIES

1935

Jun. 5—Filed Libel in Rem
" Stipulation for Costs
" Appearance
" Praecipe
Issued Monition and Attachment

Jun. 7—Filed Claim of Ownership, by Aktieselskabet Borgestad
Filed Appearance
" Release Bond, Claimant ($5,500 Pac. Ind. Co.)
Issued Notice of Bonding to Marshal by Clerk
Filed U. S. Marshal's Return on Notice of Bonding
Filed Stipulation for Costs, by Claimant
" Marshal's Return on Monition and Attachment

Jun. 17—Filed Affidavit of Publication

1936

July 7—Entered order cause dismissed, Rule 48—Proctors notified

July 9—Entered Order, oral motion Libelant, Order of Dismissal vacated

1937

May 14—Filed Answer (and Affirmative Defense)

July 6—Entered order over Term

1938

Feb. 1—Trial Apr. 7

Apr. 6—Filed Stip. to cont. trial date

Entered order trial date cont'd to May 9, 2 P. M. (See 7331)

May 9—Entered record of trial,—under advisement.

Filed Libelant's Brief

" Stipulation of Facts

Respondent 10 days; Libelant 10 days more; (See 7331)

Filed Cost Bill ($85)

Jun. 21—Filed and entered Order re submission—Clerk to notify

Jun. 23—Filed Stipulation re Brief

Jun. 30— " Brief of Respondents (filed in 7331)

July 13— " Brief of Libelant (see 7331)

Dec. 7— " Memo. Ruling (with 7331)—Decree for libelant, to be settled on notice

1939

Mar. 2—Findings and Conclusions and Final Decree submitted to Court (See 7331)

Mar. 7—Filed and entered Findings of Fact and Conclusions of Law

Filed Exceptions (allowed)

Filed and entered Decree, for libelant: $4,631.71 and int. $1,038.83, and costs, $85

Filed Exceptions (allowed)

1939

Apr. 4—Filed Petition for Appeal (Claimant)

" Notice of Presentation [163]

" Stip. for Consol. Appeals (See 7331)

" Stip. as to appeal bond and stay (See 7331)

Filed Supplemental Stipulation for Value (Release bond heretofore filed is increased to $6,000)

Apr. 5—Filed Assignment of Errors

" Praecipe for Apostles on Appeal (See 7331)

" Statement (addressed to C.C.A.) (See 7331)

May 4—To comparing and certifying transcript of record on appeal. [164]

Record of Proceedings:

At a regular session of the United States District Court for the Western District of Washington, held at Tacoma, in the Southern Division thereof on the 7th day of July, 1936, the Honorable Edward E. Cushman, U. S. District Judge presiding: among other proceedings had were the following, truly taken and correctly copied from the Journal Record of said Court as follows:

[Title of District Court and Cause—No. 7331.]

MINUTE ORDER OF DISMISSAL

On this 7th day of July, 1936, on the Court's motion, It Is Ordered that this cause be and hereby is dismissed for want of prosecution, pursuant to Rule 48 of the Rules of Practice of this Court. The Clerk is directed to notify the proctors of record of this order. [165]

Record of Proceedings:

At a regular session of the United States District Court for the Western District of Washington, held at Tacoma, in the Southern Division thereof on the 7th day of July, 1936, the Honorable Edward E. Cushman, U. S. District Judge presiding: among other proceedings had were the following, truly taken and correctly copied from the Journal Record of said Court as follows:

[Title of District Court and Cause—No. 7334.]

MINUTE ORDER OF DISMISSAL

On this 7th day of July, 1936, on the Court's motion, It Is Ordered that this cause be and hereby is dismissed for want of prosecution, pursuant to Rule 48 of the Rules of Practice of this Court. The Clerk is directed to notify the proctors of record of this order. [166]

Record of Proceedings:

At a regular session of the United States District Court for the Western District of Washington, held at Tacoma, in the Southern Division thereof on the 9th day of July, 1936, the Honorable Edward E. Cushman, U. S. District Judge presiding: among other proceedings had were the following, truly taken and correctly copied from the Journal Record of said Court as follows:

[Title of District Court and Cause—No. 7331.]

MINUTE ORDER VACATING ORDER OF DISMISSAL

On this 9th day of July, 1936, on motion of John S. Robinson, one of the proctors for libelant herein, it is hereby Ordered that the Order of Dismissal for want of prosecution heretofore entered on July 7, 1936, be and hereby is vacated and set aside and this cause be and hereby is reinstated. [167]

Record of Proceedings:

At a regular session of the United States District Court for the Western District of Washington, held at Tacoma, in the Southern Division thereof on the 9th day of July, 1936, the Honorable Edward E. Cushman, U. S. District Judge presiding: among other proceedings had were the following, truly taken and correctly copied from the Journal Record of said Court as follows:

[Title of District Court and Cause—No. 7334.]

MINUTE ORDER VACATING ORDER OF DISMISSAL

On this 9th day of July, 1936, on motion of John S. Robinson, one of the proctors for libelant herein, it is hereby Ordered that the Order of Dismissal for want of prosecution heretofore entered on July 7, 1936, be and hereby is vacated and set aside and this cause be and hereby is reinstated. [168]

[Title of District Court and Cause—No. 7331.]

NOTICE OF APPEAL

To Signal Oil and Gas Company of California, a corporation, Libelant;

To Glenn J. Fairbrook and Fairbrook & Williams, its Proctors;

To the Honorable E. E. Cushman, Judge of the above entitled court, and Elmer Dover, its Clerk:

You, and each of you, will please take notice that Dampskibsselskabet Dannebrog, a corporation, claimant above named, hereby appeals unto the United States Circuit Court of Appeals for the Ninth Circuit from that certain final decree signed by the Honorable E. E. Cushman, Judge of the above entitled court, filed with the Clerk of said court, and entered in the above entitled cause upon

the 7th day of March, 1939, against said claimant and in favor of said libelant, hereby appealing from the whole of said final decree, and from each and every part thereof.

Dated this 16th day of March, 1939.

HAYDEN, MERRITT, SUMMERS & BUCEY,

Proctors for claimant Dampskibsselskabet Dannebrog, a corporation. [169]

[Service acknowledged March 25, 1939.]

[Endorsed]: Filed April 4, 1939. [170]

[Title of District Court and Cause—No. 7334.]

NOTICE OF APPEAL

To Signal Oil and Gas Company of California, a corporation, Libelant;

To Glenn J. Fairbrook and Fairbrook & Williams, its Proctors;

To the Honorable E. E. Cushman, Judge of the above entitled court, and Elmer Dover, its Clerk:

You, and each of you, will please take notice that Aktieselskabet Borgestad, a corporation, claimant above named, hereby appeals unto the United States Circuit Court of Appeals for the Ninth Circuit from that certain final decree signed by the Honorable

E. E. Cushman, Judge of the above entitled court, filed with the Clerk of said court, and entered in the above entitled cause upon the 7th day of March, 1939, against said claimant and in favor of said libelant, hereby appealing from the whole of said final decree, and from each and every part thereof.

Dated this 16th day of March, 1939.

HAYDEN, MERRITT, SUMMERS & BUCEY,

Proctors for claimant Aktieselskabet Borgestad, a corporation. [171]

Due service of the foregoing Notice of Appeal upon this 25 day of March, 1939, is hereby acknowledged.

FAIRBROOK & WILLIAMS,

Proctors for Libelant Signal Oil and Gas Company of California, a corporation.

[Service acknowledged March 25, 1939.]

[Endorsed]: Filed April 4, 1939. [172]

[Title of District Court and Cause—No. 7331.]

PETITION FOR APPEAL

To the Honorable Judges of the Above Entitled Court:

Dampskibsselskabet Dannebrog, claimant in the above entitled cause, being aggrieved by that certain

final decree, signed, filed and entered in the above entitled cause on the 7th day of March, 1939, hereby claims an appeal therefrom to the United States Circuit Court of Appeals for the Ninth Circuit, and hereby prays that such appeal may be allowed forthwith by order of the above entitled court, without issuance of citation, upon said claimant's notice of appeal and assignments of error, heretofore filed and duly presented herewith.

Dated this 16th day of March, 1939, at Seattle, Washington.

HAYDEN, MERRITT, SUMMERS & BUCEY,
Proctors for said claimant above named.

[Service acknowledged March 25, 1939.]

[Endorsed]: Filed Apr. 4, 1939. [173]

[Title of District Court and Cause—No. 7334.]

PETITION FOR APPEAL

To the Honorable Judges of the Above Entitled Court:

Aktieselskabet Borgestad, claimant in the above entitled cause, being aggrieved by that certain final decree, signed, filed and entered in the above entitled cause on the 7th day of March, 1939, hereby claims an appeal therefrom to the United States

Circuit Court of Appeals for the Ninth Circuit, and hereby prays that such appeal may be allowed forthwith by order of the above entitled court, without issuance of citation, upon said claimant's notice of appeal and assignments of error, heretofore filed and duly presented herewith.

Dated this 16th day of March, 1939, at Seattle, Washington.

HAYDEN, MERRITT, SUMMERS & BUCEY,
Proctors for said claimant above named.

[Service acknowledged March 25, 1939.]

[Endorsed]: Filed Apr. 4, 1939. [174]

[Title of District Court and Cause—No. 7331.]

NOTICE OF PRESENTATION

To Signal Oil and Gas Company of California, a corporation, Libelant above named, and to Fairbrook & Williams, its proctors:

You, and each of you, will please take notice that Dampskibsselskabet Dannebrog, a corporation, claimant above named, will present to the above entitled court, the Honorable E. E. Cushman presiding, its petition for appeal, notice of appeal, assignments of error, cost and supersedeas bond, and

proposed order allowing appeal, upon the 4th day of April, 1939, at the hour of 10 o'clock A. M., or as soon thereafter as hearing may be had.

Dated this 16th day of March, 1939.

HAYDEN, MERRITT, SUMMERS & BUCEY,

Proctors for claimant Dampskibsselskabet Dannebrog.

[Service acknowledged March 25, 1939.]

[Endorsed]: Filed Apr. 4, 1939. [175]

[Title of District Court and Cause—No. 7334.]

NOTICE OF PRESENTATION

To Signal Oil and Gas Company of California, a corporation, Libelant above named, and to Fairbrook & Williams, its proctors:

You, and each of you, will please take notice that Aktieselskabet Borgestad, a corporation, claimant above named, will present to the above entitled court, the Honorable E. E. Cushman presiding, its petition for appeal, notice of appeal, assignments of error, cost and supersedeas bond, and proposed order allowing appeal, upon the 4th day of April,

1939, at the hour of 10 o'clock A. M., or as soon thereafter as hearing may be had.

Dated this 16 day of March, 1939.

HAYDEN, MERRITT, SUMMERS & BUCEY,
Proctors for claimant
Aktieselskabet Borgestad.

[Service acknowledged March 25, 1939.]

[Endorsed]: Filed March 25, 1939. [176]

[Title of District Court and Cause—No. 7334.]

SUPPLEMENTAL STIPULATION FOR VALUE

Whereas, in the above entitled cause release bond was executed on or about June 6, 1935, in the sum of $5500 by Vestindisk Handelskompagni (West Indian Trading Company) of Copenhagen, Denmark, as principal, and Pacific Indemnity Company, a corporation, as surety, and was filed in the above entitled cause on or about June 7, 1935, to effect release of the respondent motorship "Brand";

Whereas, by virtue of the accrual of interest and allowance of costs constituting a part of the judgment of the above entitled court in its decree entered in the above entitled cause on March 7, 1939, the amount of said bond has become inadequate;

Now, Therefore, the amount of said bond is hereby increased from the total sum of $5500 to the total

sum of $6000, all other provisions, terms and conditions of said bond to continue unmodified, it being understood that this Supplemental Stipulation for Value shall effect merely an increase in the [177] amount of said original release bond.

Dated at Seattle, Washington, this 16th day of March, 1939.

(Principal)
VESTINDISK HANDELSKOMPAGNI.
(West Indian Trading Company)
By HAYDEN, MERRITT, SUMMERS & BUCEY,
Its Proctors.

(Surety)
[Seal] PACIFIC INDEMNITY COMPANY
By MERRY ROSSMAN,
Its Attorney-in-fact.

United States of America,
State of Washington,
County of King—ss.

This is to certify that on this 16th day of March, 1939, before me, the undersigned notary public, personally appeared Merry Rossman, to me known to be the attorney-in-fact of Pacific Indemnity Company, the corporation that executed the within and foregoing Stipulation for Value, and acknowledged the same to be the free and voluntary act and deed of said corporation for the uses and purposes therein

mentioned, and on oath stated that he was authorized to execute the same as attorney-in-fact, and that the seal affixed is the corporate seal of said corporation.

In Witness Whereof, I have hereunto set my hand and official seal the day and year in this certificate first above written.

[Seal] LANE SUMMERS,
Notary Public in and for the State of Washington, residing at Seattle.

The foregoing Supplemental Stipulation for Value is hereby approved.

FAIRBROOK & WILLIAMS,
Proctors for Libelant.

[Endorsed]: Filed Apr. 4, 1939. [178]

[Title of District Court and Cause—No. 7331.]

ASSIGNMENTS OF ERROR

Claimant above named hereby respectfully assigns errors by the United States District Court for the Western District of Washington, Southern Division, in respect to its memorandum decision filed December 7, 1938, and in respect to its findings of fact, conclusions of law, and decree, signed, filed and entered March 7, 1939, as follows:

(1) The court erred in its said memorandum decision by holding that the stipulated facts showed

that the fuel oil was furnished upon the credit of the vessel, and resulted in the creation of a maritime lien.

(2) The court erred in its said memorandum decision by holding that the collateral pledge agreement, accepted by libelant as pledgee from the charterer of the respondent vessel as pledgor, did not constitute a waiver of the maritime lien, if any had been previously created.

(3) The court erred in its said memorandum decision by holding that libelant's agreement to refrain from enforcing [179] payment from the charterer of the respondent vessel prior to September 1, 1935, did not constitute a waiver of the maritime lien, if any had been previously created.

(4) The court erred in its said memorandum decision by rejecting and denying claimant's partial defense to the effect that the fuel oil furnished on or about May 14-15, 1934, at Astoria, Oregon, was not a lienable necessity when ordered and received, because it was not an essential to the voyage then contemplated by the respondent vessel, but was desired by the charterer merely to comply with its charter party obligations.

(5) The court erred in its said memorandum decision by directing a decree in favor of libelant, with interest and costs.

(6) The court erred in its said findings of fact and its said conclusions of law by holding that fuel oil of the value of $3824.65, furnished by libelant to the respondent vessel on or about May 14-15,

1934, was furnished upon the credit of said vessel, and that a maritime lien was created therefor.

(7) The court erred in its said findings of fact and its said conclusions of law by failing to hold that the fuel oil was furnished by libelant to the respondent vessel solely upon the personal credit of the charterer of said vessel, and that no maritime lien was created therefor.

(8) The court erred in its said findings of fact and its said conclusions of law by holding that the maritime lien, if any, had not been waived by libelant.

(9) The court erred in its said findings of fact and its said conclusions of law by failing to hold that the maritime lien, if any, had been waived by libelant. [180]

(10) The court erred in its said findings of fact and its said conclusions of law by holding that the fuel oil furnished to the respondent vessel was a necessity for the contemplated voyage.

(11) The court erred in its said findings of fact and its said conclusions of law by failing to hold that the fuel oil furnished to the respondent vessel was not a lienable necessary, since when ordered and received it was not essential to the voyage then contemplated, but was desired by the charterer merely to comply with its charter party obligations.

(12) The court erred in its said findings of fact and its said conclusions of law by holding that libelant was entitled to a decree in its favor.

(13) The court erred in its said findings of fact and its said conclusions of law by failing to hold that decree should be entered against libelant dismissing the libel.

(14) The court erred in its said memorandum decision and in its said findings of fact and its said conclusions of law by failing to hold that under the terms of the general contract for the sale and purchase of fuel oil between the libelant and the charterer of the respondent vessel, no maritime lien was contemplated or could arise.

(15) The court erred in its said memorandum decision and in its said findings of fact and its said conclusions of law by failing to hold that under the terms of the charter party covering the respondent vessel at the time fuel oil was furnished by libelant, the charterer possessed no power or authority to pledge the credit of the vessel or to create a maritime lien against the same. [181]

(16) The court erred in its said decree by holding that libelant had a maritime lien against the respondent vessel, and by granting judgment in favor of libelant, foreclosing such lien in the sum of $3824.65, and allowing interest and costs thereon.

(17) The court erred in its said decree by failing to hold that libelant had no maritime lien against the respondent vessel, and by failing to dismiss the libel, against libelant and in favor of claimant, with allowance of claimant's costs.

Dated at Seattle, this 16th day of March, 1939.

HAYDEN, MERRITT, SUMMERS & BUCEY,
Proctors for Claimant above named.

[Service acknowledged March 25, 1939.]

[Endorsed]: Filed Apr. 4, 1939. [182]

[Title of District Court and Cause—No. 7334.]

ASSIGNMENTS OF ERROR

Claimant above named hereby respectfully assigns errors by the United States District Court for the Western District of Washington, Southern Division, in respect to its memorandum decision filed December 7, 1938, and in respect to its findings of fact, conclusions of law, and decree, signed, filed and entered March 7, 1939, as follows:

(1) The court erred in its said memorandum decision by holding that the stipulated facts showed that the fuel oil was furnished upon the credit of the vessel, and resulted in the creation of a maritime lien.

(2) The court erred in its said memorandum decision by holding that the collateral pledge agreement, accepted by libelant as pledgee from the charterer of the respondent vessel as pledgor, did not constitute a waiver of the maritime lien, if any had been previously created.

(3) The court erred in its said memorandum decision by holding that libelant's agreement to re-

frain from enforcing [183] payment from the charterer of the respondent vessel prior to September 1, 1935, did not constitute a waiver of the maritime lien, if any had been previously created.

(4) The court erred in its said memorandum decision by directing a decree in favor of libelant, with interest and costs.

(5) The court erred in its said findings of fact and its said conclusions of law by holding that fuel oil of the value of $4631.71, furnished by libelant to the respondent vessel, was so furnished upon the credit of said vessel, and that a maritime lien was created therefor.

(6) The court erred in its said findings of fact and its said conclusions of law by failing to hold that the fuel oil was furnished by libelant to the respondent vessel solely upon the personal credit of the charterer of said vessel, and that no maritime lien was created therefor.

(7) The court erred in its said findings of fact and its said conclusions of law by holding that the maritime lien, if any, had not been waived by libelant.

(8) The court erred in its said findings of fact and its said conclusions of law by failing to hold that the maritime lien, if any, had been waived by libelant.

(9) The court erred in its said findings of fact and its said conclusions of law by holding that the fuel oil furnished to the respondent vessel was a necessity for the contemplated voyage.

(10) The court erred in its said findings of fact and its said conclusions of law by holding that libelant was entitled to a decree in its favor. [184]

(11) The court erred in its said findings of fact and its said conclusions of law by failing to hold that decree should be entered against libelant, dismissing the libel.

(12) The court erred in its said memorandum decision and in its said findings of fact and its said conclusions of law by failing to hold that under the terms of the general contract for the sale and purchase of fuel oil between the libelant and the charterer of the respondent vessel, no maritime lien was contemplated or could arise.

(13) The court erred in its said memorandum decision and in its said findings of fact and its said conclusions of law by failing to hold that under the terms of the charter party covering the respondent vessel at the time fuel oil was furnished by libelant, the charterer possessed no power or authority to pledge the credit of the vessel or to create a maritime lien against the same.

(14) The court erred in its said decree by holding that libelant had a maritime lien against the respondent vessel, and by granting a judgment in favor of libelant, foreclosing such lien in the sum of $4631.71, and allowing interest and costs thereon.

(15) The court erred in its said decree by failing to hold that libelant had no maritime lien against the respondent vessel, and by failing to dismiss the libel, against libelant and in favor of claimant, with allowance of claimant's costs.

Dated at Seattle, this 16th day of March, 1939.

HAYDEN, MERRITT, SUMMERS & BUCEY,

Proctors for Claimant above named. [185]

Due service of the foregoing Assignments of Error, by receipt of copy thereof, is hereby acknowledged this 25 day of March, 1939.

FAIRBROOK & WILLIAMS,

Proctors for Libelant.

[Service acknowledged March 25, 1939.]

[Endorsed]: Filed Apr. 5, 1939. [186]

[Title of District Court and Cause—No. 7331.]

ORDER GRANTING PETITION FOR APPEAL

The above entitled cause having duly and regularly come on for hearing before the above entitled court, the undersigned Judge presiding, upon petition for appeal of claimant Dampskibsselskabet Dannebrog, presented to this court with said claimant's notice of appeal, assignments of error, and stipulation in lieu of cost and supersedeas bond on appeal, all having heretofore been filed, and the court having considered the same;

Now, therefore, it is hereby ordered and adjudged:

(1) That said petition for appeal is granted as prayed, appeal being allowed in the above entitled cause without issuance of citation;

(2) That National Surety Corporation, a corporation, surety upon claimant's stipulation for costs, and surety upon claimant's release bond, is not a necessary party appellant to such appeal;

(3) That stipulation signed by libelant, accepting claimant's release bond in the sum of $5000 in lieu of cost and supersedeas bond on appeal, is approved, claimant being allowed to appeal upon such stipulation without filing additional security; [187]

(4) That stay of execution, in conformity with libelant's stipulation, is granted.

Done at Tacoma, Washington, this 5th day of April, 1939.

EDWARD E. CUSHMAN,
United States District Judge.

The foregoing order is hereby approved this 25 day of March, 1939.

FAIRBROOK & WILLIAMS,
Proctors for Libelant.

Presented by:

ERNEST FALK
Of Proctors for Claimant.

[Endorsed]: Filed Apr. 5, 1939. [188]

[Title of District Court and Cause—No. 7334.]

ORDER GRANTING PETITION FOR APPEAL

The above entitled cause having duly and regularly come on for hearing before the above entitled court, the undersigned Judge presiding, upon pe-

tition for appeal of claimant Aktieselskabet Borgestad, presented to this court with said claimant's notice of appeal, assignments of error, and stipulation in lieu of cost and supersedeas bond on appeal, all having heretofore been filed, and the court having considered the same;

Now, therefore, it is hereby ordered and adjudged:

(1) That said petition for appeal is granted as prayed, appeal being allowed in the above entitled cause without issuance of citation;

(2) That Pacific Indemnity Company, a corporation, surety upon claimant's stipulation for costs, and surety upon claimant's release bond, is not a necessary party appellant to such appeal;

(3) That stipulation signed by libelant, accepting claimant's release bond in the sum of $5500, and claimant's supplemental stipulation for value for the additional sum of [189] $500, in lieu of cost and supersedeas bond on appeal, is approved, claimant being allowed to appeal upon such stipulation without filing additional security;

(4) That stay of execution, in conformity with libelant's stipulation, is granted.

Done at Tacoma, Washington, this 5th day of April, 1939.

EDWARD E. CUSHMAN,
United States District Judge.

The foregoing order is hereby approved this 25 day of March, 1939.

FAIRBROOK & WILLIAMS,
Proctors for Libelant.

Presented by:

ERNEST FALK

Of Proctors for Claimant.

[Endorsed]: Filed Apr. 5, 1939. [190]

[Title of District Court and Causes—Consolidated.]

STIPULATION CONSOLIDATING APPEALS

By and between libelant above named and claimants above named, it is hereby stipulated that the appeal in the cause against the respondent motorship "Stjerneborg", and the appeal in the cause against the respondent motorship "Brand" may be consolidated for reasons of economy and convenience; that [191] claimants, jointly, may file a single praecipe for transcript of record; that claimants may cause to be prepared but a single transcript of record for apostles on appeal, and that both causes may be presented to the United States Circuit Court of Appeals for the Ninth Circuit as a single appeal, claimants (as appellants) filing only one original brief, libelant (as appellee) filing only one answering brief, and claimants (as appellants) filing only one reply brief, if any.

FAIRBROOK & WILLIAMS,

Proctors for Libelants.

HAYDEN, MERRITT, SUMMERS & BUCEY,

Proctors for Claimants.

[Endorsed]: Filed Apr. 4, 1939. 192]

[Title of District Court and Causes—Consolidated.]

STIPULATION AS TO APPEAL BOND AND STAY OF EXECUTION

It is hereby stipulated by and between libelant above named and claimants above named that in the above entitled causes claimants above named need secure and file no cost or supersedeas bond on appeal; that in the above entitled cause against the motorship "Brand" release bond in the sum of $5500, filed on or about June 7, 1935, coupled with Supplemental Stipulation for Value in the additional sum of $500, filed on or about [193] April 4th, 1939, and in the above entitled cause against the motorship "Stjerneborg" the release bond in the sum of $5000, filed on or about May 16, 1935, shall serve to secure [illegible]ant in lieu of cost and supersedeas bond on appeal; and that without other security, execution upon final decrees in both of the above entitled causes shall be stayed during the time within which claimants are by law allowed to appeal from the decrees of the above entitled court in said causes, and (providing such appeals shall have been perfected) shall thereafter be further stayed until the ultimate determination thereof.

Dated this 16th day of March, 1939.

FAIRBROOK & WILLIAMS,
Proctors for Libelant.

HAYDEN, MERRITT, SUMMERS & BUCEY,
Proctors for Claimants.

[Endorsed]: Filed April 4, 1939. [194]

[Title of District Court and Causes—Consolidated.]

PRAECIPE FOR APOSTLES

To the Clerk of the Above Entitled Court:

Utilizing transcript filed herewith, you are hereby requested to prepare in the above entitled cause apostles on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, supplementing and comparing such transcript to the extent necessary to make index and certify full, true and complete apostles on appeal, as required by Rule 3 of the Admiralty Rules of that court, containing the following: [195]

(1) Caption showing proper style of the court and showing titles and numbers of the causes consolidated;

(2) Introductory statement;

(3) Property attached and proceedings relative thereto;

(4) Pleadings, together with exhibits, interrogatories, answers to interrogatories, stipulations, orders, and other proceedings prior to trial;

(5) Clerk's minutes of various court orders, and all entries or notations on clerk's docket in the causes;

(6) Stipulation of facts upon which the causes were submitted to trial, and all other record of trial;

(7) The court's decision, filed December 7, 1938;

(8) Findings of Fact and Conclusions of Law, filed March 7, 1939;

(9 Claimants' Exceptions to Findings of Fact and Conclusions of Law, filed March 7, 1939;

(10) Final decree, filed March 7, 1939;

(11) Claimants' Exceptions to Final Decree, filed March 7, 1939;

(12) Cost bills;

(13). All notices, motions, petitions, orders, stipulations and other papers and proceedings related to the appeal;

(14) Endorsements or notations of dates of service and filing of all papers included within said apostles;

(15) All other motions, stipulations, orders, and other matters material to the appeal, filed subsequent hereto;

(16) This praecipe.

Dated this 16th day of March, 1939.

HAYDEN, MERRITT, SUMMERS & BUCEY,

Proctors for Claimants. [196]

[Service acknowledged March 25, 1939.]

[Endorsed]: Filed April 5, 1939. [197]

[Title of District Court and Causes—Consolidated.]

CERTIFICATE OF CLERK OF THE UNITED STATES DISTRICT COURT TO APOSTLES ON APPEAL

United States of America,
Western District of Washington,
Southern Division—ss.

I, Elmer Dover, Clerk of the United States District Court for the Western District of Washington, do hereby certify: [198]

(1) That the foregoing typewritten transcript (consisting of pages numbered consecutively from 1 to 200, both inclusive) constitutes the apostles on appeal from final decree entered on the 7th day of March, 1939, in the above entitled admiralty cause entitled "Signal Oil and Gas Company of California, a corporation, Libelant, vs. Motorship "Stjerneborg", Respondent, Dampskibsselskabet Dannebrog, a corporation, Claimant", Number 7331, wherein Dampskibsselskabet Dannebrog, a corporation, is appellant, and also in the above entitled admiralty cause, entitled "Signal Oil and Gas Company of California, a corporation, Libelant, vs. Motorship 'Brand', Respondent, Aktieselskabet Borgestad, Claimant", Number 7334, wherein Aktieselskabet Borgestad, a corporation, is appellant, in both of which Signal Oil and Gas Company of California is appellee.

(2) That said apostles contains all of the pleadings, bonds, stipulations, orders, minutes, "Stipu-

lation of Facts", and all other papers, proceedings and matters on file and of record in my office in both of said above entitled causes, required to be included therein by stipulation of proctors, by praecipe of appellants, and by applicable rules of the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to which said apostles have been made.

(3) That a full and correct statement of all expenses, costs, fees and charges incurred in my office by or for said appellants for transcription, comparison and certification of said apostles is the following: [199]

Clerk's fees (Act of February 11, 1925) for transcription of 30 folios at 15¢ per folio (appellants having prepared and supplied transcript of all the record, excepting only transcript of the clerk's minutes and docket entries). And also several other stipulations and orders	$ 4.50
Clerk's fees (Act of February 11, 1925) for comparison of 367 folios at 5¢ per folio	$18.35
Appeal fee (Sec. 5 of the Act of February 11, 1925) for appellant, Dampskibsselskabet Dannebrog, a corporation, in the cause entitled "Signal Oil and Gas Company of California, a corporation, Libelant, vs. Motorship 'Stjerneborg', Respondent, Dampskibsselskabet Dannebrog, a corporation, Claimant"	5.00

Appeal fee (Sec. 5 of the Act of February 11, 1925) for appellant Aktieselskabet Borgestad, a corporation, in the cause entitled "Signal Oil and Gas Company of California, a corporation, Libelant, vs. Motorship 'Brand', Respondent, Aktieselskabet Borgestad, a corporation, Claimant"	5.00
Certificate of Clerk to Apostles	.50
	33.35

(4) That said sum of $33.35 has been paid to me by proctors for said appellants.

In witness whereof, I have hereunto set my hand and affixed the official seal of said District Court at Tacoma in said district this 4th day of May, 1939.

[Seal] ELMER DOVER,

Clerk of the United States District Court for the Western District of Washington,

By R. B. ALLEN,

Deputy. [200]

[Endorsed]: No. 9182. United States Circuit Court of Appeals for the Ninth Circuit. Dampskibsselskabet Dannebrog, a corporation, as Claimant of the Motorship "Stjerneborg", Appellant, vs. Signal Oil and Gas Company of California, a corporation, Appellee. Aktieselskabet [illegible]gestad, a corporation, as Claimant of the Motorship "Brand", Appellant, vs. Signal Oil and Gas Company of California, a corporation, Appellee. Apostles on Appeals. Upon Appeals from the District Court of the United States for the Western District of Washington, Southern Division.

Filed May 8, 1939.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals for the Ninth Circuit

No. 9182

SIGNAL OIL AND GAS COMPANY OF CALIFORNIA, a corporation,

Libelant-Appellee.

vs.

Motorship "STJERNEBORG",

Respondent,

DAMPSKIBSSELSKABET DANNEBROG, a corporation,

Claimant-Appellant.

SIGNAL OIL AND GAS COMPANY OF CALIFORNIA, a corporation,

Libelant-Appellee,

vs.

Motorship "BRAND",

Respondent,

AKTIESELSKABET BORGESTAD, a corporation,

Claimant.

STATEMENT OF POINTS

1. Appellants upon the appeal in the above entitled cause intend to rely upon the following points:

(1) No maritime lien was created.

(a) The terms of the charter parties covering the respondent vessels obligated the charterer to pay for fuel oil, and did not authorize or empower the charterer, upon whose order appellee supplied fuel oil, to pledge the credit of the respondent vessels;

(b) The fuel oil was sold to the charterer and was delivered to the respondent vessels by appellee under its general sales contract with the charterer, not upon the credit of the vessels themselves, but upon the personal credit of the charterer.

(2) Maritime lien, if any, was waived:

(a) By the terms of the appellee's general contract with the charterer for the future sale of fuel oil;

(b) By appellee's acceptance, as pledgee, from the charterer, as pledgor, of collateral pledge agreement covering the charterer's assets;

(c) By appellee's agreement to refrain, along with other creditors, from enforcing against the charterer its personal obligation to pay for fuel oil furnished the respondent vessels.

(3) Fuel oil was not a necessity for the contemplated voyages of the respondent vessels, but was required by the charterer to meet its personal obligations under the charter parties.

(4) Considering appellee's delay after instituting suit, resulting in dismissal for want of prosecution, no interest should have been allowed to appellee.

(5) Each and all of the assignments of error, incorporated herein by reference.

II. Appellants designate the entire transcript of record as appropriate for printing to serve as the basis for the presentation to the above entitled court of the foregoing points.

HAYDEN, MERRITT, SUMMERS & BUCEY,

Proctors for Appellants.

[Receipt of copy acknowledged May 29, 1939.]

[Endorsed]: Filed May 31, 1939. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

STIPULATION AS TO PRINTING

By and between appellee above named and appellants above named, it is hereby stipulated that in printing the typewritten transcript of record on appeal it shall not be necessary for the Clerk to cause to be printed: (1) titles, endorsements by the Clerk of the lower court, or acknowledgments of service, except only in so far as necessary to identify the various papers and to show the dates when the same were served and filed; (2) stipulations and orders relative to continuances or briefs; and (3) stipulations for costs.

Dated this 12th day of May, 1939.

FAIRBROOK & WILLIAMS,
Proctors for Appellee.

HAYDEN, MERRITT, SUMMERS & BUCEY,
Proctors for Appellants.

[Endorsed]: Filed May 15, 1939. Paul P. O'Brien, Clerk.

No. 9182

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

DAMPSKIBSSELSKABET DANNEBROG, a corporation, as Claimant of the Motorship "STJERNEBORG",

Appellant,

vs.

SIGNAL OIL AND GAS COMPANY OF CALIFORNIA, a corporation,

Appellee.

AKTIESELSKABET BORGESTAD, a corporation, as Claimant of the Motorship "BRAND",

Appellant,

vs.

SIGNAL OIL AND GAS COMPANY OF CALIFORNIA, a corporation,

Appellee.

Upon Appeals from the District Court of the United States for the Western District of Washington, Southern Division.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PARKER PRINTING COMPANY, 543 SANSOME STREET, SAN FRANCISCO

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Friday, September 15, 1939.

Before: Wilbur, Haney and Healy,
Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered appeals in above cause argued by Mr. Lane Summers, proctor for appellants, and by Mr. Glenn J. Fairbrook, proctor for appellee, and submitted to the court for consideration and decision, with leave to appellants to file reply brief in 5 days.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Thursday, October 26, 1939.

Before: Wilbur, Haney and Healy,
Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF DECREE.

By direction of the Court, Ordered that the typewritten opinion this day rendered by this court in above cause be forthwith filed by the clerk, and that a decree be filed and recorded in the minutes

of this court in accordance with the opinion rendered.

[Title of Circuit Court of Appeals and Cause.]

Upon Appeals from the District Court of the United States for the Western District of Washington, Southern Division.

OPINION

Before: Wilbur, Haney and Healy,
Circuit Judges.

Haney, Circuit Judge.

Appeal is taken from decrees in admiralty enforcing liens on two motorships for oil furnished such vessels by appellee.

In September, 1932, appellee entered into a contract with Anglo Canadian Shipping Co., Ltd., by which appellee agreed to sell fuel oil to any vessel which Anglo might "own, charter, operate or be agents for". On May 19, 1933, such contract was modified "to include the fuel oil requirements of any and all vessels owned, chartered and or operated" by W. L. Comyn & Sons, hereinafter called Comyn. Subsequently, and before the ships in question were chartered by Comyn, the contract was further modified and required appellee to bill Comyn direct for oil used by the latter.

Comyn chartered for a specified time the motorships Brand and Stjerneborg, the charter parties requiring Comyn to provide and pay for all oil.

Comyn chartered the "Stjerneborg" on January 27, 1934, and the "Brand" on March 8, 1934. On April 26, 1934, appellee delivered fuel oil to the "Brand" at Point Wells, Washington, and on May 11, 1934, made a further delivery to the "Brand" at San Pedro, California. All deliveries were made on the orders of Comyn. Appellee issued invoices for these deliveries, totalling $4,631.71 to the "Brand and Owners" in care of Comyn. On May 15, 1934, appellee delivered fuel oil to the "Sterneborg" at Astoria, Oregon, and issued its invoice for $3,824.63 to the "Stjerneborg and Owners" in care of Comyn.

In July, 1934, Comyn by a pledge, created a lien on certain securities in favor of appellee, which lien was second to one held by a Seattle bank. Thereafter appellee waived its lien on the securities by permitting the Seattle bank to obtain a paramount lien on the securities as security for a subsequent loan of $900. Upon sale of the securities, appellee released its claim to $1,474.96 of the proceeds to which it was entitled, and signed a Creditors' Agreement granting Comyn a year's extension of time to meet its obligations. In April, 1935, Comyn released appellee from such Creditors' Agreement.

The pledge agreement contained a provision that it would not preclude appellee from collecting any obligation without resorting to the securities pledged, and that such pledge agreement should not constitute "any release or waiver of any lien" ap-

pellee might have against the vessels. The Creditors' Agreement contained a provision that the execution thereof by appellee should not constitute "any release or waiver of any lien or the right to a lien" which appellee might have.

After delivery of fuel oil to it, the "Brand" left for Europe. Upon its return, it was docked at Los Angeles for one day, and then left for Vancouver, B. C., and thence to the Orient. Upon its return, it docked at certain points in California and Washington from March 28, 1935 to April 13, 1935. It then left for the Orient and upon its return was libelled in this cause on June 5, 1935.

After delivery of the fuel oil to it, the "Stjerneborg" left for Australia and other foreign countries, and upon its return, was docked at various points in California, Washington and Oregon from December 30, 1934 to January 14, 1935. It then left for the Orient, and upon its return was libelled in the instant cause on May 11, 1935.

The answers filed by the owners of the vessels alleged that (1) the owner and the vessels were not liable because the oil was not furnished upon the order of the owner or anyone authorized by it; (2) the oil was furnished upon the credit of Conyn and not that of the vessels; (3) the liens, if any, were waived by appellee's release of its claims upon the securities and proceeds thereof, under the pledge, and by execution of the Creditors' Agreement. The causes were consolidated for trial.

The facts above mentioned being stipulated, the Court adopted such stipulation as its findings and

concluded that the fuel oil delivered was necessary for the voyages contemplated, was furnished upon the credit of the vessels, that liens were created and not waived. A decree in favor of appellee was entered in each cause, with interest, from which this appeal was taken.

46 USCA §971 provides:

> "Any person furnishing * * * supplies * * * to any vessel, whether foreign or domestic, upon the order * * * of a person authorized by the owner, shall have a maritime lien on the vessel, which may be enforced by suit in rem, and it shall not be necessary to allege or prove that credit was given to the vessel."

46 USCA §972 provides:

> "The following persons shall be presumed to have authority from the owner to procure * * * supplies. * * * any person to whom the management of the vessel at the port of supply is intrusted * * *"

First. Appellants contend that no lien arose because "appellee did, by the terms of its blanket contract and by its course of dealings thereunder, rely solely upon the individual credit of" Comyn, and that there is nothing to show that Comyn "was ever granted authority to bind the vessels by imposing a lien thereon". Marshall & Co. v. "Pres. Arthur", 279 U.S. 564 is heavily relied on, but we think it is not applicable. It was there held that

> "* * * the libellant, having made specific contracts for an express security, instead of resting on the lien which the law would otherwise give, must rely on the contracts it made for itself, and cannot now, in a change of circumstances, resort to the lien it would have had in the absence of the special agreements; and that by taking other and different security, upon which it relied, and which it still retains, without stipulating for the retention of the lien, it has waived the lien which it otherwise would have had."

The controlling factor in that case was that at the time of delivery of coal libellant insisted upon and obtained security for the amount owing it. A like fact is absent here.

The instant case is controlled by The Portland, 9 Cir., 273 F. 401 and The Golden Gate, 9 Cir., 52 F(2d) 397, cert. den. 284 U.S. 682), which hold adversely to appellants' contentions. Appellants ask us to again consider the contentions made implying that the cases mentioned should be overruled. The rule of The Portland, supra, was re-examined in the Golden Gate, supra, and again in The Luddeo 41, 9 Cir., 66 F(2d) 997. No compelling reason requires re-examination now. The owners are not without a means of protection. 46 USCA §973.

Second. Appellants further contend that if a lien arose it was waived by appellee because it entered the creditor's agreement and accepted security by the pledge agreement. It will be recalled

that by both agreements the rights to liens were retained. Appellee had the right to rely on the credit of both the vessels and the charterer. Piedmont Coal Co. v. Seaboard Fisheries Co., 254 U.S. 1, 10. There is nothing inconsistent in appellee's actions to show that it was renouncing the liens, but in fact retention thereof was specifically provided for. We think appellee did not waive its rights to the liens. See: El Amigo, 5 Cir., 285 F. 868: The Golden Gate, supra, 400. In Marshall & Co. v. "Pres. Arthur", supra, 572 and in The City of Seattle, 2 Cir., 61 F(2d) 763, 764, there were waivers of the liens, but in both there was no reservation of the lien. The inference is that had there been such a reservation, as here, there would have been no waivers.

Third. Appellants also contend that "in admiralty interest may be properly disallowed or reduced because of unusual delay in the prosecution of an admiralty cause". Appellants concede that they are responsible for a part of the delay, but that "there is a subsfantial excess of delay justly chargeable to appellee." The record does not disclose which of the parties caused the delay. The allowance of interest is discretionary. The Albert Dumois, 177 U.S. 240, 255. In the absence of anything in the record disclosing who may be blamed for the delay, we are not warranted in holding that the trial court abused its discretion.

Affirmed.

[Endorsed]: Opinion. Filed Oct. 26, 1939. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 9182

DAMPSKIBSSELSKABET DANNEBROG, etc.,
Appellant,

vs.

SIGNAL OIL & GAS COMPANY OF CALIFORNIA, etc.,
Appellee,

and

AKTIESELSKABET BORGESTAD, etc.,
Appellant,

vs.

SIGNAL OIL & GAS COMPANY OF CALIFORNIA, etc.,
Appellee.

DECREE

Appeals from the District Court of the United States for the Western District of Washington, Southern Division.

This Cause came on to be heard on the Apostles on Appeals from the District Court of the United States for the Western District of Washington, Southern Division, and was duly submitted:

On Consideration Whereof, it is now here ordered, adjudged, and decreed by this Court, that the decrees of the said District Court in this cause

be, and hereby are affirmed, with costs in favor of the appellee and against the appellants.

It Is Further Ordered, Adjudged, and Decreed by this Court, that the appellee recover against the appellants for its costs herein expended, and have execution therefor.

[Endorsed]: Filed and entered Oct. 26, 1939. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

ORDER STAYING MANDATE

On application of appellants, based upon stipulations on file and additional security furnished to appellee by appellants, it is hereby Ordered that issuance of mandate of this court under Rule 28 in the above entitled consolidated causes be, and it hereby is, stayed until the expiration of the time allowed by law to appellants within which to file with the Clerk of the Supreme Court of the United States a petition for writ of certiorari in the above entitled consolidated causes; and, in the event that such petition be filed within such time, then until such petition be denied by order of the Supreme Court of the United States; and, in the event such petition be granted by the Supreme Court of the United States, then until final determination of the above entitled consolidated causes by that court.

Dated this 9th day of December, 1939.

CURTIS D. WILBUR

Senior U. S. Circuit Judge

Approved by:

GLENN J. FAIRBROOK

Of Proctors for Appellee

LANE SUMMERS

Of Proctors for Appellants.

[Endorsed]: Filed Dec. 9, 1939. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

CERTIFICATE OF CLERK, U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing two hundred and thirty (230) pages, numbered from and including 1 to and including 230, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellants, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 13th day of December, 1939.

[Seal] PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed February 26, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.